

City Hall
80 Broad Street
September 23, 2014
4:30 p.m.

COMMITTEE ON WAYS AND MEANS

1. Invocation – Councilmember Wagner
2. Approval of Minutes:
 - a.) September 9, 2014
3. Bids and Purchases
4. Police Department: Approval to accept the 2014 Edward Byrne Memorial Grant from OJP in the amount of \$29,642 for Wearable Video Recorders. No City match is required.
5. Office of Cultural Affairs: Approval to apply for a grant in the amount of \$2,500 from the SC Arts Commission for the 2014 MOJA Arts Festival Literary Corner and Dance Gala. A City match in the amount of \$2,500 will come from ticket sales. This grant was submitted August 14, 2014.
6. Fire Department: Approval of a Memorandum of Understanding (“MOU”) between the City of Charleston and the Charleston County Sheriff’s Office to provide mutual assistance along with multi-agency marine public safety units to respond to homeland security fire protection related issues, patrol waterways, conduct search and rescue missions, and provide other assistance to local, State, and Federal agencies as needed. The MOU further provides that the Charleston Fire Department will participate in the Charleston Metro Marine Unit, hosted by the Charleston County Sheriff’s Office, for administrative and training purposes. The MOU will remain in effect for one year from the date of ratification and will automatically renew thereafter unless one party decides not to renew it.
7. Parks-Capital Projects: Approval of a construction contract with *AOS Specialty Contractors*, in the amount of \$4,193,007.57, for streetscape, two-way street conversion, and new signalization construction on Spring and Cannon Street corridors. The contract includes the base bid of \$3,918,609.92; additive bid #1, in the amount of \$218,397.65, for signalization; and additive bid #2, in the amount of \$56,000, for brick detail planters. Approval of the construction contract will institute a \$5,852,127.13 project budget, of which the \$4,193,007.57 construction contract will be funded. The funding source for this project is Gateway TIF {\$5,852,127.13}.
8. Parks-Capital Projects: Approval of a professional services contract and fee amendment #8 with *Kenneth B. Simmons Associates*, in the amount of \$209,371.83, for construction administration services for the Spring & Cannon Streetscape, two-way street conversion, and new signalization project. Approval for the fee amendment will increase the existing contract

with *Kenneth B. Simmons Associates* by \$209,371.83, from \$611,811 to \$821,182.83. The funding source for this project is Gateway TIF {\$5,852,127.13}.

9. Public Service: Approval of IPR Southeast, LLC's proposal in the amount of \$600,000 to perform various storm drain cleaning & inspection services per their response to a RFQ for these services. Contract is for two years with option of two one-year extensions.
10. Public Service: Approval of Southern Premier Contractors, Inc.'s proposal in the amount of \$600,000 to perform various storm drain cleaning & inspection services per their response to a RFQ for these services. Contract is for two years with option of two one-year extensions.
11. Public Service: Approval of emergency storm drain repairs in the amount of \$301,844.35 at Dunnemann Avenue (between 10th & Wagener Avenue) by B&C Utilities, Inc. This was an emergency repair. Due to the presence of numerous sink holes in the road, the work was completed to avoid a potential safety hazard.
12. The Committee on Real Estate: (Meeting was held Monday, September 22, 2014 at 4:15 p.m., City Hall, 80 Broad Street)
 - a.) Condemnation Resolution for Cainhoy Public Safety Facility
 - b.) Executive Session related to acquisition of easements

COMMITTEE / COUNCIL AGENDA

3a.

TO: Joseph P. Riley, Jr., Mayor
FROM: Wes Ratterree DEPT. Information Technology
SUBJECT: NETWORK EQUIPMENT FOR GAILLARD CENTER AND NEW DATA CENTER
REQUEST: APPROVAL TO PURCHASE ALL NECESSARY NETWORK EQUIPMENT FROM
INTERNETWORK ENGINEERING. STATE CONTRACT #: 4400002804

COMMITTEE OF COUNCIL: Ways & Means DATE: September 23, 2014

COORDINATION: This request has been coordinated with: *(attach all recommendations/reviews)*

	Yes	N/A	Signature of Individual Contacted	Attachment
Information Technology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Hgs Seeh</u>	<input checked="" type="checkbox"/>
Procurement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Wes Ratterree</u>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept./Div.: IT Account #: 161000-58020 (\$298,933.66)
161000-52740 (\$122,227.53)
161000-58012 (\$ 27,031.72)
161000-52206 (\$ 56,850.01)


Balance in Account \$505,042.92* Amount needed for this item \$505,042.92

Does this document need to be recorded at the RMC's Office? Yes ☐ No ☒

NOTES: This purchase includes all necessary network equipment to stand up the new Gaillard Center, the new Municipal Emergency Operations Center (MEOC) and the new Data Center that houses all core City data communications, voice communications and storage resources. This order includes all switches, wireless access points, firewalls and controllers, and associated software and services.

CFO's Signature: 

FISCAL IMPACT: * This will be funded with 2013 general fund balance reserves and will be included in a future 2014 budget amendment.

Mayor's Signature: 
Joseph P. Riley, Jr., Mayor



people connecting people
**INTERNETWORK
ENGINEERING**

City of Charleston

Gaillard Network Upgrade

Presented by Ryan Jenkins - Internetwork Engineering

Pricing Worksheet

9/12/2014

SC State Contract # 4400002804

Cisco Network Hardware and Software*	\$413,081.02
Implementation Services	\$56,850.00
Shipping	\$0
Estimated Taxes	\$35,111.89
Total	\$505,042.91

***Please reference the *Internetwork Engineering Statement of Work* and the *Internetwork Engineering Quotation Document* for line-item equipment pricing and project implementation details.**



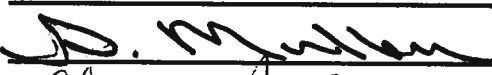

COMMITTEE / COUNCIL AGENDA

4

TO: Joseph P. Riley, Jr., Mayor
FROM: Stephen A. Bedard DEPT. BFRC
SUBJECT: POLICE DEPARTMENT-U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS'-BUREAU OF JUSTICE ASSISTANCE
REQUEST: To accept the 2014 Edward Byrne Memorial grant from OJP in the amount of \$29,642 for Wearable Video Recorders

COMMITTEE OF COUNCIL: W&M DATE: September 23, 2014

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Police Department	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Grants Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☐ No ☐ N/A ☐

If yes, provide the following: Dept./Div.: Account #:

Balance in Account Amount needed for this item

Does this document need to be recorded at the RMC's Office? Yes ☐ No ☒

NEED: Identify any critical time constraint(s).

CFO's Signature: 

FISCAL IMPACT:
No city match required

Mayor's Signature: 
Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.



Department of Justice
Office of Justice Programs

Bureau of Justice Assistance

Office of Justice Programs

Washington, D.C. 20531

August 26, 2014

The Honorable Joseph P. Riley Jr.
City of Charleston
80 Broad St.
P.O. Box 652
Charleston, SC 29401-2901

Dear Mayor Riley:

On behalf of Attorney General Eric Holder, it is my pleasure to inform you that the Office of Justice Programs has approved your application for funding under the FY 14 Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local in the amount of \$29,642 for City of Charleston.

Enclosed you will find the Grant Award and Special Conditions documents. This award is subject to all administrative and financial requirements, including the timely submission of all financial and programmatic reports, resolution of all interim audit findings, and the maintenance of a minimum level of cash-on-hand. Should you not adhere to these requirements, you will be in violation of the terms of this agreement and the award will be subject to termination for cause or other administrative action as appropriate.

If you have questions regarding this award, please contact:

- Program Questions, Cynthia Y. Simons, Program Manager at (202) 305-1020; and
- Financial Questions, the Office of the Chief Financial Officer, Customer Service Center (CSC) at (800) 458-0786, or you may contact the CSC at ask.ocfo@usdoj.gov.

Congratulations, and we look forward to working with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Denise O'Donnell", is located below the "Sincerely," text.

Denise O'Donnell
Director

Enclosures



OFFICE FOR CIVIL RIGHTS

Office of Justice Programs

Department of Justice

810 7th Street, NW
Washington, DC 20531

Tel: (202) 307-0690

TTY: (202) 307-2027

E-mail: askOCR@usdoj.gov

Website: www.ojp.usdoj.gov/ocr

August 26, 2014

The Honorable Joseph P. Riley Jr.
City of Charleston
80 Broad St.
P.O. Box 652
Charleston, SC 29401-2901

Dear Mayor Riley:

Congratulations on your recent award. In establishing financial assistance programs, Congress linked the receipt of federal funding to compliance with federal civil rights laws. The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) is responsible for ensuring that recipients of financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) comply with the applicable federal civil rights laws. We at the OCR are available to help you and your organization meet the civil rights requirements that come with DOJ funding.

Ensuring Access to Federally Assisted Programs

Federal laws that apply to recipients of financial assistance from the DOJ prohibit discrimination on the basis of race, color, national origin, religion, sex, or disability in funded programs or activities, not only in employment but also in the delivery of services or benefits. A federal law also prohibits recipients from discriminating on the basis of age in the delivery of services or benefits.

In March of 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013. The statute amends the Violence Against Women Act of 1994 (VAWA) by including a nondiscrimination grant condition that prohibits discrimination based on actual or perceived race, color, national origin, religion, sex, disability, sexual orientation, or gender identity. The new nondiscrimination grant condition applies to certain programs funded after October 1, 2013. The OCR and the OVW have developed answers to some frequently asked questions about this provision to assist recipients of VAWA funds to understand their obligations. The Frequently Asked Questions are available at <http://ojp.gov/about/ocr/vawafaqs.htm>.

Enforcing Civil Rights Laws

All recipients of federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to prohibitions against unlawful discrimination. Accordingly, the OCR investigates recipients that are the subject of discrimination complaints from both individuals and groups. In addition, based on regulatory criteria, the OCR selects a number of recipients each year for compliance reviews, audits that require recipients to submit data showing that they are providing services equitably to all segments of their service population and that their employment practices meet equal opportunity standards.

Providing Services to Limited English Proficiency (LEP) Individuals

In accordance with DOJ guidance pertaining to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, recipients of federal financial assistance must take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). See U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (2002). For more information on the civil rights responsibilities that recipients have in providing language services to LEP individuals, please see the website <http://www.lep.gov>.

Ensuring Equal Treatment for Faith-Based Organizations

The DOJ regulation, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38, requires State Administering Agencies (SAAs) to treat faith-based organizations the same as any other applicant or recipient. The regulation prohibits SAAs from making awards or grant administration decisions on the basis of an organization's religious character or affiliation, religious name, or the religious composition of its board of directors.

The regulation also prohibits faith-based organizations from using financial assistance from the DOJ to fund inherently (or explicitly) religious activities. While faith-based organizations can engage in non-funded inherently religious activities, they must hold them separately from the program funded by the DOJ, and recipients cannot compel beneficiaries to participate in them. The Equal Treatment Regulation also makes clear that organizations participating in programs funded by the DOJ are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. For more information on the regulation, please see the OCR's website at http://www.ojp.usdoj.gov/about/ocr/equal_fbo.htm.

SAAs and faith-based organizations should also note that the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, 42 U.S.C. § 3789d(c); the Victims of Crime Act of 1984, as amended, 42 U.S.C. § 10604(e); the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. § 5672(b); and VAWA, Pub. L. No. 113-4, sec. 3(b)(4), 127 Stat. 54, 61-62 (to be codified at 42 U.S.C. § 13925(b)(13)) contain prohibitions against discrimination on the basis of religion in employment. Despite these nondiscrimination provisions, the DOJ has concluded that it may construe the Religious Freedom Restoration Act (RFRA) on a case-by-case basis to permit some faith-based organizations to receive DOJ funds while taking into account religion when hiring staff, even if the statute that authorizes the funding program generally forbids recipients from considering religion in employment decisions. Please consult with the OCR if you have any questions about the regulation or the application of RFRA to the statutes that prohibit discrimination in employment.

Using Arrest and Conviction Records in Making Employment Decisions

The OCR issued an advisory document for recipients on the proper use of arrest and conviction records in making hiring decisions. See Advisory for Recipients of Financial Assistance from the U.S. Department of Justice on the U.S. Equal Employment Opportunity Commission's Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (June 2013), available at http://www.ojp.usdoj.gov/about/ocr/pdfs/UseofConviction_Advisory.pdf. Recipients should be mindful that the misuse of arrest or conviction records to screen either applicants for employment or employees for retention or promotion may have a disparate impact based on race or national origin, resulting in unlawful employment discrimination. In light of the Advisory, recipients should consult local counsel in reviewing their employment practices. If warranted, recipients should also incorporate an analysis of the use of arrest and conviction records in their Equal Employment Opportunity Plans (EEOs) (see below).

Complying with the Safe Streets Act

An organization that is a recipient of financial assistance subject to the nondiscrimination provisions of the Safe Streets Act, must meet two obligations: (1) complying with the federal regulation pertaining to the development of an EEO (see 28 C.F.R. pt. 42, subpt. E) and (2) submitting to the OCR findings of discrimination (see 28 C.F.R. §§ 42.204(c), .205(c)(5)).

Meeting the EEOP Requirement

If your organization has less than fifty employees or receives an award of less than \$25,000 or is a nonprofit organization, a medical institution, an educational institution, or an Indian tribe, then it is exempt from the EEOP requirement. To claim the exemption, your organization must complete and submit Section A of the Certification Form, which is available online at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and receives an award of \$25,000 or more, but less than \$500,000, and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form), but it does not have to submit the report to the OCR for review. Instead, your organization has to maintain the Utilization Report on file and make it available for review on request. In addition, your organization has to complete Section B of the Certification Form and return it to the OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

If your organization is a government agency or private business and has received an award for \$500,000 or more and has fifty or more employees (counting both full- and part-time employees but excluding political appointees), then it has to prepare a Utilization Report (formerly called an EEOP Short Form) and submit it to the OCR for review within sixty days from the date of this letter. For assistance in developing a Utilization Report, please consult the OCR's website at <http://www.ojp.usdoj.gov/about/ocr/eeop.htm>. In addition, your organization has to complete Section C of the Certification Form and return it to the OCR. The Certification Form is available at <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>.

To comply with the EEOP requirements, you may request technical assistance from an EEOP specialist at the OCR by telephone at (202) 307-0690, by TTY at (202) 307-2027, or by e-mail at EEOSubmission@usdoj.gov.

Meeting the Requirement to Submit Findings of Discrimination

If in the three years prior to the date of the grant award, your organization has received an adverse finding of discrimination based on race, color, national origin, religion, or sex, after a due-process hearing, from a state or federal court or from a state or federal administrative agency, your organization must send a copy of the finding to the OCR.

Ensuring the Compliance of Subrecipients

SAAAs must have standard assurances to notify subrecipients of their civil rights obligations, written procedures to address discrimination complaints filed against subrecipients, methods to monitor subrecipients' compliance with civil rights requirements, and a program to train subrecipients on applicable civil rights laws. In addition, SAAAs must submit to the OCR every three years written Methods of Administration (MOA) that summarize the policies and procedures that they have implemented to ensure the civil rights compliance of subrecipients. For more information on the MOA requirement, see http://www.ojp.usdoj.gov/funding/other_requirements.htm.


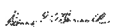
If the OCR can assist you in any way in fulfilling your organization's civil rights responsibilities as a recipient of federal financial assistance, please contact us.

Sincerely,



Michael L. Alston
Director

cc: Grant Manager
Financial Analyst

 Department of Justice Office of Justice Programs Bureau of Justice Assistance		Grant		PAGE 1 OF 7																	
1. RECIPIENT NAME AND ADDRESS (Including Zip Code) City of Charleston 80 Broad St. P.O. Box 652 Charleston, SC 29401-2901		4. AWARD NUMBER: 2014-DJ-BX-0462																			
		5. PROJECT PERIOD: FROM 10/01/2013 TO 09/30/2017 BUDGET PERIOD: FROM 10/01/2013 TO 09/30/2017																			
		6. AWARD DATE 08/26/2014		7. ACTION Initial																	
1A. GRANTEE IRS/VENDOR NO. 576000226		8. SUPPLEMENT NUMBER 00																			
		9. PREVIOUS AWARD AMOUNT \$ 0																			
3. PROJECT TITLE Expansion of Charleston Police Department Public Safety Technological Initiative		10. AMOUNT OF THIS AWARD \$ 29,642																			
		11. TOTAL AWARD \$ 29,642																			
12. SPECIAL CONDITIONS THE ABOVE GRANT PROJECT IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS AS ARE SET FORTH ON THE ATTACHED PAGE(S).																					
13. STATUTORY AUTHORITY FOR GRANT This project is supported under FY14(BJA - JAG) 42 USC 3750, et seq.																					
15. METHOD OF PAYMENT GPRS																					
AGENCY APPROVAL			GRANTEE ACCEPTANCE																		
16. TYPED NAME AND TITLE OF APPROVING OFFICIAL Denise O'Donnell Director			18. TYPED NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Joseph P. Riley Mayor																		
17. SIGNATURE OF APPROVING OFFICIAL 			19. SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		19A. DATE																
AGENCY USE ONLY																					
20. ACCOUNTING CLASSIFICATION CODES <table border="1"> <thead> <tr> <th>FISCAL YEAR</th> <th>FUND CODE</th> <th>BUD. ACT.</th> <th>OFC.</th> <th>DIV. REG.</th> <th>SUB.</th> <th>POMS</th> <th>AMOUNT</th> </tr> </thead> <tbody> <tr> <td>X</td> <td>B</td> <td>DJ</td> <td>80</td> <td>00</td> <td>00</td> <td></td> <td>29642</td> </tr> </tbody> </table>				FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT	X	B	DJ	80	00	00		29642	21. NDJUGT1064	
FISCAL YEAR	FUND CODE	BUD. ACT.	OFC.	DIV. REG.	SUB.	POMS	AMOUNT														
X	B	DJ	80	00	00		29642														

OJP FORM 4000/2 (REV. 5-87) PREVIOUS EDITIONS ARE OBSOLETE.

OJP FORM 4000/2 (REV. 4-88)



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET
Grant**

PAGE 2 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

1. The recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.
2. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the recipient is in compliance.
3. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of OJP grant funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide.
4. Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of OJP.
5. The recipient must promptly refer to the DOJ OIG any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any subrecipients. Potential fraud, waste, abuse, or misconduct should be reported to the OIG by -

mail:

Office of the Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Avenue, N.W.
Room 4706
Washington, DC 20530

e-mail: oig.hotline@usdoj.gov

hotline: (contact information in English and Spanish): (800) 869-4499

or hotline fax: (202) 616-9881

Additional information is available from the DOJ OIG website at www.usdoj.gov/oig.

6. Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of OJP.
7. The recipient agrees to comply with any additional requirements that may be imposed during the grant performance period if the agency determines that the recipient is a high-risk grantee. Cf. 28 C.F.R. parts 66, 70.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET
Grant**

PAGE 3 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

8. The recipient agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM) (or with a successor government-wide system officially designated by OMB and OJP). The recipient also agrees to comply with applicable restrictions on subawards to first-tier subrecipients that do not acquire and provide a Data Universal Numbering System (DUNS) number. The details of recipient obligations are posted on the Office of Justice Programs web site at <http://www.ojp.gov/funding/sam.htm> (Award condition: Registration with the System for Award Management and Universal Identifier Requirements), and are incorporated by reference here. This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).
9. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages recipients and sub recipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
10. The recipient agrees to comply with all applicable laws, regulations, policies, and guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences, meetings, trainings, and other events, including the provision of food and/or beverages at such events, and costs of attendance at such events. Information on pertinent laws, regulations, policies, and guidance is available in the OJP Financial Guide Conference Cost Chapter.
11. The recipient understands and agrees that any training or training materials developed or delivered with funding provided under this award must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://www.ojp.usdoj.gov/funding/ojptrainingguidingprinciples.htm>.
12. The recipient agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this OJP award, and those award funds have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this OJP award, the recipient will promptly notify, in writing, the grant manager for this OJP award, and, if so requested by OJP, seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) to eliminate any inappropriate duplication of funding.
13. The recipient understands and agrees that award funds may not be used to discriminate against or denigrate the religious or moral beliefs of students who participate in programs for which financial assistance is provided from those funds, or of the parents or legal guardians of such students.
14. The recipient understands and agrees that - (a) No award funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography, and (b) Nothing in subsection (a) limits the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.
15. The recipient agrees to comply with OJP grant monitoring guidelines, protocols, and procedures, and to cooperate with BJA and OCFO on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits. The recipient agrees to provide to BJA and OCFO all documentation necessary to complete monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by BJA and OCFO for providing the requested documents. Failure to cooperate with BJA's/OCFO's grant monitoring activities may result in sanctions affecting the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to grant funds; referral to the Office of the Inspector General for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET**
Grant

PAGE 4 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

16. The recipient agrees to comply with applicable requirements to report first-tier subawards of \$25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS). The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the Office of Justice Programs web site at <http://www.ojp.gov/funding/ffata.htm> (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here. This condition, and its reporting requirement, does not apply to grant awards made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).
17. The recipient agrees that all income generated as a direct result of this award shall be deemed program income. All program income earned must be accounted for and used for the purposes of funds provided under this award, including such use being consistent with the conditions of the award, the effective edition of the OJP Financial Guide and, as applicable, either (1) 28 C.F.R. Part 66 or (2) 28 C.F.R Part 70 and 2 C.F.R. Part 215 (OMB Circular A-110). Further, the use of program income must be reported on the quarterly Federal Financial Report, SF 425.
18. To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the grantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.
19. In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires the grantee to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular grant. Grantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: http://www.it.ojp.gov/gsp_grantcondition. Grantee shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.
20. The recipient is required to establish a trust fund account. (The trust fund may or may not be an interest-bearing account.) The fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the grant funds in the trust fund (including any interest earned) during the period of the grant and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to the Office of Justice Programs at the time of closeout.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET**
Grant

PAGE 5 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

21. The grantee agrees to assist BJA in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these grant funds, either directly by the grantee or by a subgrantee. Accordingly, the grantee agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the grant, the grantee agrees to contact BJA.

The grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

- a. New construction;
- b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The grantee understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The grantee further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at <http://www.ojp.usdoj.gov/BJA/resource/nepa.html>, for programs relating to methamphetamine laboratory operations.

Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the grantee's or its subgrantees' existing programs or activities that will be funded by these grant funds, the grantee, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

22. JAG funds may be used to purchase vests for an agency, but they may not be used as the 50% match for purposes of the Bulletproof Vest Partnership (BVP) program.
23. The recipient agrees to submit a signed certification that all law enforcement agencies receiving vests purchased with JAG funds have a written "mandatory wear" policy in effect. Fiscal agents and state agencies must keep signed certifications on file for any subrecipients planning to utilize JAG funds for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any JAG funding can be used by the agency for body armor. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty.
24. Ballistic-resistant and stab-resistant body armor purchased with JAG funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the vests have been tested and found to comply with applicable National Institute of Justice ballistic or stab standards and are listed on the NIJ Compliant Body Armor Model List (<http://nij.gov>). In addition, ballistic-resistant and stab-resistant body armor purchased must be American-made. The latest NIJ standard information can be found here: <http://www.nij.gov/topics/technology/body-armor/safety-initiative.htm>.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET**
Grant

PAGE 6 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

25. The recipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 42 U.S.C. 3789g(c)-(d). Recipient may not satisfy such a fine with federal funds.
26. The recipient agrees to ensure that the State Information Technology Point of Contact receives written notification regarding any information technology project funded by this grant during the obligation and expenditure period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these grant funds. In addition, the recipient agrees to maintain an administrative file documenting the meeting of this requirement. For a list of State Information Technology Points of Contact, go to <http://www.it.ojp.gov/default.aspx?area=policyAndPractice&page=1046>.
27. The grantee agrees to comply with the applicable requirements of 28 C.F.R. Part 38, the Department of Justice regulation governing "Equal Treatment for Faith Based Organizations" (the "Equal Treatment Regulation"). The Equal Treatment Regulation provides in part that Department of Justice grant awards of direct funding may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from the grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding any other special condition of this award, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See http://www.ojp.gov/about/ocr/equal_fbo.htm.
28. The recipient acknowledges that all programs funded through subawards, whether at the state or local levels, must conform to the grant program requirements as stated in BJA program guidance.
29. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.
30. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, section 22.23.
31. The recipient agrees to monitor subawards under this JAG award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines, including the OJP Financial Guide, and to include the applicable conditions of this award in any subaward. The recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of JAG funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.
32. The recipient agrees that funds received under this award will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**AWARD CONTINUATION
SHEET
Grant**

PAGE 7 OF 7

PROJECT NUMBER 2014-DJ-BX-0462

AWARD DATE 08/26/2014

SPECIAL CONDITIONS

33. Award recipients must submit quarterly a Federal Financial Report (SF-425) and annual performance reports through GMS (<https://grants.ojp.usdoj.gov>). Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA), P.L. 103-62, applicants who receive funding under this solicitation must provide data that measure the results of their work. Therefore, quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) website (www.bjaperformancetools.org). For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage. Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.
34. Award recipients must verify Point of Contact (POC), Financial Point of Contact (FPOC), and Authorized Representative contact information in GMS, including telephone number and e-mail address. If any information is incorrect or has changed, a Grant Adjustment Notice (GAN) must be submitted via the Grants Management System (GMS) to document changes.
35. The grantee agrees that within 120 days of award acceptance, each current member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. Additionally, all future task force members are required to complete this training once during the life of this award, or once every four years if multiple awards include this requirement. The training is provided free of charge online through BJA's Center for Task Force Integrity and Leadership (www.ctfli.org). This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. When BJA funding supports a task force, a task force personnel roster should be compiled and maintained, along with course completion certificates, by the grant recipient. Additional information is available regarding this required training and access methods via BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).
36. No JAG funds may be expended on the purchase of unmanned aircraft, unmanned aircraft systems or unmanned aerial vehicles (UA/UAS/UAV), unless the BJA Director certifies that extraordinary and exigent circumstances exist, making them essential to the maintenance of public safety and good order. Any state or local jurisdiction receiving BJA approval to utilize JAG funds for this type of purchase must certify to DOJ that it received Federal Aviation Administration (FAA) approval to operate a UA/UAS/UAV and that it is legal to operate a UA/UAS/UAV in the proposed jurisdiction or geographic area. The recipient must submit a statement on the goals and objectives for the use of a UA/UAS/UAV, the anticipated specific uses, and policy regarding privacy considerations. BJA may require additional reporting requirements that will be stipulated post award.
37. BJA strongly encourages the recipient to submit annual (or more frequent) JAG success stories. To submit a success story, sign in to your My BJA account at <https://www.bja.gov/Login.aspx> to access the Success Story Submission form. If you do not yet have a My BJA account, please register at <https://www.bja.gov/profile.aspx>. Once you register, one of the available areas on your My BJA page will be "My Success Stories". Within this box, you will see an option to add a Success Story. Once reviewed and approved by BJA, all success stories will appear on the new BJA Success Story web page at <https://www.bja.gov/SuccessStoryList.aspx>.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

Washington, D.C. 20531

Memorandum To: Official Grant File

From: Orbin Terry, NEPA Coordinator

Subject: Incorporates NEPA Compliance in Further Developmental Stages for City of Charleston

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party. Accordingly, prior to obligating funds for any of the specified activities, the grantee must first determine if any of the specified activities will be funded by the grant.

The specified activities requiring environmental analysis are:

- a. New construction;
- b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;
- c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
- d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
- e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see <http://www.ojp.usdoj.gov/BJA/resource/nepa.html>. Please be sure to carefully review the grant conditions on your award document, as it may contain more specific information about environmental compliance.



Department of Justice
Office of Justice Programs
Bureau of Justice Assistance

**GRANT MANAGER'S MEMORANDUM, PT. I:
PROJECT SUMMARY**

Grant

PROJECT NUMBER

2014-DJ-BX-0462

PAGE 1 OF 1

This project is supported under FY14(BJA - JAG) 42 USC 3750, et seq.

1. STAFF CONTACT (Name & telephone number)

Cynthia Y. Simons
(202) 305-1020

2. PROJECT DIRECTOR (Name, address & telephone number)

Christine Middleton
Support Services Commander
180 Lockwood Dr.
Charleston, SC 29401-2901
(843) 720-3799

3a. TITLE OF THE PROGRAM

BJA FY 14 Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local

**3b. POMS CODE (SEE INSTRUCTIONS
ON REVERSE)**

4. TITLE OF PROJECT

Expansion of Charleston Police Department Public Safety Technological Initiative

5. NAME & ADDRESS OF GRANTEE

City of Charleston
80 Broad St. P.O. Box 652
Charleston, SC 29401-2901

6. NAME & ADDRESS OF SUBGRANTEE

7. PROGRAM PERIOD

FROM: 10/01/2013 TO: 09/30/2017

8. BUDGET PERIOD

FROM: 10/01/2013 TO: 09/30/2017

9. AMOUNT OF AWARD

\$ 29,642

10. DATE OF AWARD

08/26/2014

11. SECOND YEAR'S BUDGET

12. SECOND YEAR'S BUDGET AMOUNT

13. THIRD YEAR'S BUDGET PERIOD

14. THIRD YEAR'S BUDGET AMOUNT

15. SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse)

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and units of local government, including tribes, to support a broad range of activities to prevent and control crime based on their own state and local needs and conditions. Grant funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice, including for any one or more of the following program areas: 1) law enforcement programs; 2) prosecution and court programs; 3) prevention and education programs; 4) corrections and community corrections programs; 5) drug treatment and enforcement programs; 6) planning, evaluation, and technology improvement programs; and 7) crime victim and witness programs (other than compensation).

The grantee will use this JAG award to purchase body cameras. The goal of the project is to increase essential law enforcement services. NCA/NCF

COMMITTEE / COUNCIL AGENDA

5

TO: Joseph P. Riley, Jr., Mayor

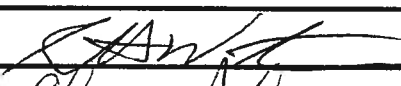
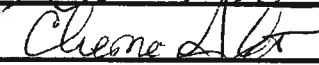
FROM: Stephen A. Bedard DEPT. BFRC

SUBJECT: OFFICE OF CULTURAL AFFAIRS – SOUTH CAROLINA ARTS COMMISSION

REQUEST: To apply for a grant in the amount of \$2,500 from The SC Arts
Commission for the 2014 MOJA Arts Festival Literary Corner and
Dance Gala

COMMITTEE OF COUNCIL: W&M DATE: September 23, 2014

COORDINATION: This request has been coordinated with: *(attach all recommendations/reviews)*

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Office of Cultural Affairs	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Grants Manager	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☐ No ☐ N/A ☐

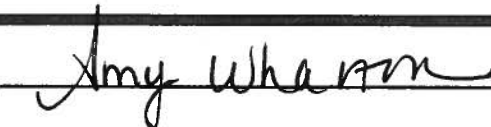
If yes, provide the following: Dept./Div.: _____ Account #: _____

Balance in Account _____ Amount needed for this item _____

Does this document need to be recorded at the RMC's Office? Yes ☐ No ☐

NEED: Identify any critical time constraint(s).

This grant was submitted August 14, 2014.

CFO's Signature: 

FISCAL IMPACT:

A city match in the amount of \$2,500 will come from ticket sales.

Mayor's Signature: 
Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

GRANT APPLICATION for ORGANIZATIONS

APPLICANT INFORMATION

City of Charleston (Office of Cultural Affairs)

57-6000226

Applicant Organization's Legal Name

Piccolo Spoleto, MOJA, Charleston Farmers Market, Holiday Magic, Arts in Charleston

Federal Employer ID#

0779907860000

Doing Business As/Also Known As – if applicable

180 Meeting Street, Suite 200

Charleston

29401-3182

DUNS#

Charleston

Street Address

City

Zip Code+4

SC County

Congressional: US House District **1**

State: Senate District **43**

State: House District **110**

Find your 9 digit zip code and your legislative districts at <http://www.scstatehouse.gov/legislatorssearch.php>

same as above

Mailing Address (if different from Street Address)

City

Zip Code+4

Scott Watson

Director-Cultural Affairs

(843) 720-3885

(843) 720-3967

Contact Person

Title

Daytime Phone

FAX#

WatsonS@charleston-sc.gov

www.charlestonarts.org

Contact's Email Address

Organization's Web Address

May we include contact's email address when giving information to constituents? ☒ yes ☐ no

Joseph P. Riley, Jr.

Mayor-City of Charleston

(843) 724-3737

Applicant Organization's Authorized Official Title

Daytime Phone

PRIMARY ORGANIZATIONAL FUNCTION:

☐ Arts Producing

☒ Arts Presenting

☐ Arts Service

☐ Arts Education

☐ Non-Arts

FISCAL RECEIVER/PARTNER INFORMATION

YOU MUST FILL OUT THIS SECTION IF:

- You are applying for an SCAC grant and do NOT have Federal Tax Exempt status, OR
- You are a school or a unit of government, OR
- You are applying for an SCAC grant with a partner organization and will share the responsibilities of the project.

The organization listed below is: (select one)

☐ Fiscal Agent/Receiver for APPLICANT (includes school districts and other units of government)

☒ APPLICANT'S Project Partner

Fiscal Receiver/Partner's Legal Name

Federal Employer ID#

Doing Business As/Also Known As – if applicable

DUNS#

Street Address

City

Zip Code+4

SC County

Mailing Address (if different from Street Address)

City

Zip Code+4

Contact Person

Title

Daytime Phone

FAX#

Contact's Email Address

Organization's Web Address

May we include contact's email address when giving information to constituents? ☒ yes ☐ no

Fiscal Receiver/Partner's Authorized Official Title

Daytime Phone

APPLICANT NAME: City of Charleston (Office of Cultural Affairs)

ORGANIZATION GRANT APPLICATION SUMMARY

Grant Program Category: select only one program below

- ☐ AIE Education and Community Partnership Grant
☐ AIE Teacher Standards Implementation
☐ AIE ABC Advancement

- ☐ Folklife and Traditional Arts
☐ Quarterly Project
☐ Subgranting
☐ Operating Support for Small Organizations
☒ Other: Accessibility Project Grant

Brief description of project: 2014 MOJA Arts Festival Accessibility Components

(50 character maximum; for reference only. Use the Narrative portion of your application to provide a more complete description.)

Primary project discipline: select only one

- ☐ 01 Dance
☐ 02 Music
☐ 03 Opera/Musical Theatre
☐ 04 Theatre

- ☐ 05 Visual Arts
☐ 06 Design Arts
☐ 07 Crafts
☐ 08 Photography

- ☐ 09 Media Arts
☐ 10 Literature
☐ 11 Interdisciplinary
☐ 12 Folk Arts

- ☒ 14 Multi-Disciplinary
☐ 15 Non Arts

Project Activity type: select only one

- ☐ 01 acquisition
☒ 02 audience services
☐ 03 award/fellowship
☐ 04 creation of a work of art
☐ 05 concert/perf./reading
☐ 06 exhibition
☐ 07 facility constr./maint./renov.
☐ 08 fair/festival
☐ 09 ident./documentation
☐ 10 inst./org. establishment
☐ 11 institution/org. support
☐ 12 arts instruction
☐ 13 marketing

- ☐ 14 prof. support – admin.
☐ 15 prof. support - artistic
☐ 16 recording/filming/taping
☐ 17 publication
☐ 18 repair/restore/conserv.
☐ 19 research/planning
☐ 20 school residency
☐ 21 other residency
☐ 22 seminar/conference
☐ 23 equip. purchase/rental
☐ 24 distribution of art
☐ 25 apprenticeship/internship

- ☐ 26 regranting
☐ 27 translation
☐ 28 writing about art
☐ 29 professional dev./training
☐ 30 student assessment
☐ 31 curriculum dev./implement.
☐ 32 stabilization/endow./challenge
☐ 33 building public awareness
☐ 34 technical assistance
☐ 35 web site/internet development
☐ 36 broadcasting
☐ 99 none of the above

Project Dates: Start Date 9/25/2014 End Date 10/05/2014

Request \$ 2,500

SCAC staff person who advised applicant: Susan DuPlessis

All applicants are urged to discuss application process & proposal content with appropriate SCAC staff prior to applying.

APPLICANT NAME: *City of Charleston (Office of Cultural Affairs)*

CERTIFICATION

I certify to the Commission that:

1. This application is complete as required by SCAC grant guidelines, and all information and attachments in this proposal are true and correct to the best of my knowledge.
2. The applicant is in compliance with published eligibility requirements.
3. The governing body of the applicant has authorized the filing of this application and signature.
4. The activities and services for which assistance is sought will be administered by or under the supervision of the applicant solely for the described projects and programs.
5. The applicant and any organization that it assists will comply with all applicable Federal and State laws when conducting any program activity for which the applicant receives financial assistance from the Commission.

Joseph P. Riley, Jr. Mayor-City of Charleston
Authorized Official: Typed Name & Title


Signature

8/14/2014
Date

Fiscal Receiver/Partner's Authorized Official: Typed Name & Title Signature

Date

FOR SCAC USE ONLY:

Authorized Approval

Award Amount

Date

Mail application, budget form, & other attachments,* if applicable, to:

**Grants Office
S.C. Arts Commission
1026 Sumter Street, Suite 200
Columbia, SC 29201**

***Check guidelines before mailing to ensure that your application is complete.**

APPLICANT NAME:

DETAILED BUDGET FORM

EXPENSE DETAIL

Some items listed
at right may not
be allowable
expenses in the
grant category in
which you are
applying. Check
program guidelines
before submitting
this form.

ITEM

\$Amount

Personnel (organizations only; use for permanent staff.):

Admin: type/position: _____

type/position: _____

type/position: _____

Subtotal: \$0

Artistic: type/position: _____

type/position: _____

type/position: _____

Subtotal: \$0

Tech/Prod: type/position: _____

type/position: _____

type/position: _____

Subtotal: \$0

Other: type/position: _____

type/position: _____

type/position: _____

Subtotal: \$0

Outside Fees & Services: description: Artistic Performer Fees (2 events)

description: American Sign Language Interpreting Services (2 events)

description: _____

Subtotal: \$22,300
600

Space Rental: "permanent" office/organization facilities _____

other — description: _____

Subtotal: \$22,900

Travel: grantee/personnel _____

non-staff — description: Artistic Performers

Subtotal: \$0

Marketing: description: Graphic Design Services

description: Printing Services

description: _____

description: _____

Subtotal: \$637
900
1,000

Subgranting (SCAC subgrant sites also attach Subgrant Activity Summary)

non-SCAC program/description: _____

Subtotal: \$1,900

Remaining Operating Expenses

description: _____

description: _____

description: _____

description: _____

Subtotal: \$0

Subtotal: \$0

TOTAL CASH EXPENSES: \$25,437

In-Kind: if needed, attach additional sheets with descriptions, formulas & totals

Professional Services—description: _____

formula: _____ =

description: _____

formula: _____ =

Goods & Materials—description: _____

formula: _____ =

description: _____

formula: _____ =

TOTAL IN-KIND: \$0

TOTAL EXPENSES: \$25,437

DETAILED BUDGET FORM

**INCOME
DETAIL**

ITEM

\$Amount

Applicant Cash

description: _____

description: _____

description: _____

Subtotal: **\$0**

Admissions/Sales

description: Literary Corner

500

description: MOJA Dance

8,000

description: _____

Subtotal: **\$8,500**

Contracted Services Revenue

description: _____

description: _____

description: _____

Subtotal: **\$0**

Private Support:

Corporate — name: _____

name: _____

name: _____

Foundation — name: South Arts: Dance Project Grant 6,966

name: South Arts: Literary Arts Touring Grant 1,471

name: New England Foundation for the Arts: National Dance Project Grant 6,000

Other — type/name: _____

type/name: _____

type/name: _____

Subtotal: **\$14,437**

Government Support/Grants:

Federal — agency/type grant: _____

agency/type grant: _____

State/Reg'l — agency/type grant: _____

agency/type grant: _____

Other SCAC grants: type: _____

type: _____

County ATAX

County Other — description: _____

City ATAX

City Other — description: _____

Subtotal: **\$0**

Capital Expenditures (may be used as part of cash match only.)

Other Revenue: description: _____

description: _____

description: _____

description: _____

description: _____

description: _____

Subtotal: **\$0**

THIS SCAC GRANT REQUEST: 2,500

TOTAL CASH INCOME: \$25,437

TOTAL IN-KIND: \$0

TOTAL INCOME: \$25,437



City of Charleston

Joseph P. Riley, Jr.
Mayor

South Carolina
Office of Cultural Affairs

Scott Watson
Director

2014 MOJA Arts Festival – Accessibility Grant Narrative

Purpose of Request

The following narrative is to request funds from the South Carolina Arts Commission, to be used towards accessibility projects during the 2014 MOJA Arts Festival. The Festival will be held September 25 to October 5, 2014.

Project Description and Work to be Done

The MOJA Arts Festival, a celebration of African-American and Caribbean Arts and Culture, features dozens of visual arts exhibitions, music, dance and theatre performances and a variety of children's activities during 11 days each fall. MOJA also provides free programs, including dance master classes, poetry readings, writing workshops with published authors and musical presentations. Originally debuting in 1979 as the Charleston Black Arts Festival, MOJA's reputation for being an established regional arts festival has made it one of the Top 20 Events in the Southeast by the Southeastern Tourism Society. There are two primary events during the Festival where the accessibility grant funds are needed; the first is for the Literary Corner and the second is for the MOJA Dance Project.

Best-selling author and award-winning playwright Pearl Cleage will conduct a one-day residency in Charleston, SC, with a morning talk with students and an evening reading with a question and answer session. Ms. Cleage will serve as the Literary Corner artist, which will be held on Tuesday, September 30 at 7pm. The event will be held at the Avery Research Center at the College of Charleston. Each year the Literary Corner highlights the work of a nationally renowned writer of African descent whose work has contributed greatly to our culture. The MOJA Planning Committee selected Ms. Cleage to be honored with the designation as Literary Corner artist because of her extensive and diverse experience as a novelist, essayist, playwright, poet, journalist and teacher, but above all, her skills as a storyteller. Her novels, plays and poetry touch the hearts of all who come in contact with her work. Noted for her willingness to address difficult issues, Ms. Cleage explores issues of racism, sexism, drugs, poverty, domestic violence, addiction and corruption. At the same time, Ms. Cleage offers inspirational, idealistic and spiritual themes and a positive portrayal of family, friendship and community.

This year's MOJA Dance Project will take place on Friday, October 3 at 7:30pm. The event will be held at the Dock Street Theatre. The all-volunteer MOJA Planning Committee chose Carmen de Lavallade to be this year's MOJA Dance artist. Ms. de Lavallade has had an unparalleled career in dance, theater, film and television beginning in her hometown of Los Angeles performing with the Lester Horton Dance

Theater. Ms. de Lavallade will present *As I Remember It*, an intimate portrait of Ms. de Lavallade told through dance, film and her personal writings. Created by Ms. de Lavallade in collaboration with director Joe Grifasi and co-writer/dramaturg Talvin Wilks, this hour-long original work traces a career that spans over six decades and reflects on what is remembered and what is forgotten. Just as memories of our own lives are often colored by age and perspective, this dance/theater work will be shaped by Ms. de Lavallade's cognitive and muscular memories of her personal history. Video designer Maya Ciarrocchi and set designer Mimi Lien will create a sense of time and place, from her childhood days playing in the empty lots of 1930's Los Angeles to performing on many of the world's grand stages. *As I Remember It* will feature Ms. de Lavallade performing with projections of her younger self. The evening is in essence a living memoir with de Lavallade dancing through her life history. This new performance, which will tour nationally as part of the NEFA National Dance Project, will play a critical role in allowing the MOJA Arts Festival to continue to present significant dance work by African-American dance artists and ensembles.

Accessibility Issues to be Addressed and Proposed Use of SCAC Funds

There are three accessibility components we plan to address, where SCAC funds will be utilized. The first component is securing the services of a sign language interpreter to sign during the Literary Corner and during the MOJA Dance Project. *As I Remember It* incorporates dance and theater, presenting a dramatic monologue with movement and heightening the need to provide ASL at the venue. The second component is making available large print programs for each event (Literary Corner and the MOJA Dance Project). SCAC funds will be used toward the design and printing of these programs. The final component is to continue to work with our outreach partners to donate free tickets to target populations that can make use of the special accommodations being provided for the Literary Corner event and the MOJA Dance Project event. The Association for the Blind and Visually Impaired has 250 clients in the Charleston area, the Lowcountry Association of the Deaf has over 100 members and the Disabilities Board of Charleston County serves over 1,500 individuals in Berkeley, Charleston, Dorchester and Colleton counties. We will work with these organizations to organize the distribution of outreach tickets and special accommodations at the events. These outreach efforts are not limited to the Literary Corner or MOJA Dance Project, as we plan to present opportunities for individuals with disabilities to attend other events throughout the MOJA Arts Festival.

Other Accessibility Information

The City of Charleston Office of Cultural Affairs, in collaboration with the MOJA Planning Committee, will ensure that all programs during the 2014 MOJA Arts Festival are presented in ADA accessible venues. More specifically, the facilities we will use during the Literary Corner event and the MOJA Dance Project (the Historic Dock Street Theatre, the Charleston County School of the Arts theatre and dance facilities and the Avery Research Center, the Simons Center for the Arts and the Marion and Wayland H. Cato Jr. Center for the Arts at the College of Charleston) are wheelchair accessible. Since our office is part of the City of Charleston, we are fortunate to have access to a full-time ADA Coordinator on staff with the city. This individual will work with us before the festival to determine ways that we can make our programs more accessible. We also work with the Mayor's Office for Children, Youth & Families within our city government to identify special needs populations that could benefit from our programs.

Internal Revenue Service

Date: February 8, 2005

**CITY OF CHARLESTON
OFFICE OF CITY CONTROLLER
P O BOX 304
CHARLESTON SC 29402**

**Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201**

Person to Contact:
Steve Brown 31-07422
Customer Service Specialist
Toll Free Telephone Number:
8:30 a.m. to 5:30 p.m. ET
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
57-6000226

Dear Sir/Madam:

This is in response to your request of February 8, 2005, regarding your organization's exemption from Federal income tax.

As a governmental unit or a political subdivision thereof, your organization is not subject to Federal income tax under the provisions of Section 115(1) of the Internal Revenue Code, which states in part:

"Gross income does not include income derived from ... the exercise of any essential governmental function and accruing to a State or any political subdivision thereof ..."

Because your organization is a governmental unit or a political subdivision thereof, its income is not taxable as explained above. Contributions used exclusively for public purposes are deductible under Section 170(c)(1) of the Code.

Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Your organization may obtain a letter ruling on its status under section 115 by following the procedures specified in Rev. Proc. 2004-1 or its successor.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,


for Janna K. Skulica, Director, TE/GE
Customer Account Services

South Carolina Arts Commission Accessibility Grants

Optional Application Checklist

Use this optional checklist to ensure a complete Accessibility grant application package.

Submit one complete, collated set of the following items:

- ☒ **Grant application for organizations form.** Signed by Authorized Official(s).
- ☒ **Detailed budget form.**
- ☒ **Narrative.** Do not exceed two pages.
- ☐ **Photographs/Drawings/Plans.** (Capital Improvement applicants only)
- ☒ **IRS tax-exempt letter:**

If the applicant organization has its own federal tax exempt status, submit

- ☒ A copy of applicant's IRS tax-exempt letter

If the applicant organization is applying through a fiscal agent, submit

- ☐ A copy of fiscal agent's IRS tax-exempt letter **AND**
- ☐ A copy of a formal agreement between applicant and fiscal agent that outlines the working relationship and responsibilities of both parties

Submit completed applications to:
Accessibility Grants Program
South Carolina Arts Commission
1026 Sumter Street, Suite 200
Columbia, SC 29201



COMMITTEE / COUNCIL AGENDA

6

TO: Joseph P. Riley, Jr., Mayor

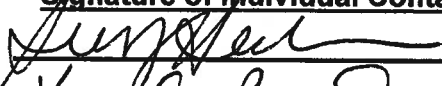
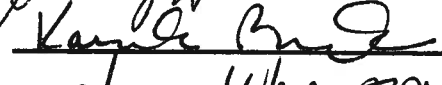

FROM: CHIEF KAREN BRACK DEPT. FIRE

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CHARLESTON AND CHARLESTON COUNTY SHERIFF'S OFFICE TO PARTICIPATE IN CHARLESTON METRO MARINE UNIT TRAINING AND FOR MUTUAL ASSISTANCE ON MARINE PUBLIC SAFETY MATTERS.

REQUEST: APPROVE MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN THE CITY OF CHARLESTON AND THE CHARLESTON COUNTY SHERIFF'S OFFICE TO PROVIDE MUTUAL ASSISTANCE ALONG WITH MULTI-AGENCY MARINE PUBLIC SAFETY UNITS TO RESPOND TO HOMELAND SECURITY FIRE PROTECTION RELATED ISSUES, PATROL WATERWAYS, CONDUCT SEARCH AND RESCUE MISSIONS, AND PROVIDE OTHER ASSISTANCE TO LOCAL, STATE, AND FEDERAL AGENCIES AS NEEDED. THE MOU FURTHER PROVIDES THAT THE CHARLESTON FIRE DEPARTMENT WILL PARTICIPATE IN THE CHARLESTON METRO MARINE UNIT, HOSTED BY THE CHARLESTON COUNTY SHERIFF'S OFFICE, FOR ADMINISTRATIVE AND TRAINING PURPOSES. THE MOU WILL REMAIN IN EFFECT FOR ONE YEAR FROM THE DATE OF RATIFICATION AND WILL AUTOMATICALLY RENEW THEREAFTER UNLESS ONE PARTY DECIDES NOT TO RENEW IT.

COMMITTEE OF COUNCIL: DATE:

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Fire Department	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Chief Financial Officer	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☐ No ☐ N/A ☐

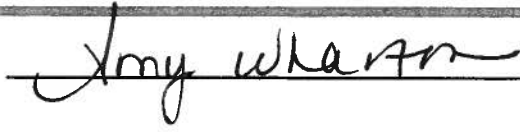
If yes, provide the following: Dept./Div.: Account #:

Balance in Account Amount needed for this item \$0

Does this document need to be recorded at the RMC's Office? Yes ☐ No ☒

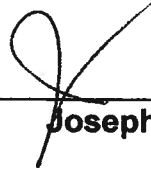
NEED: Identify any critical time constraint(s). Agreement should be approved as soon as possible.
City of North Charleston will consider matter at next City Council meeting.

CFO's Signature:



FISCAL IMPACT:

Mayor's Signature:



Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ day of _____, 2014, by and between the Charleston County Sheriff's Office and the City of Charleston on behalf of the City of Charleston Fire Department.

Purpose. To support through mutual assistance multi-agency marine public safety units in responding to waterborne Homeland Security fire protection related issues as well as elements of patrolling the waterways, conducting search and rescue missions, waterside firefighting, side scan sonar missions, assisting in Underwater Recovery Team (URT) Dive Team missions, assisting local, state and federal agencies by providing Emergency Medical Technicians and Firefighters aboard vessels being utilized in investigation, interdiction and apprehension of waterborne criminal violators, and assist in providing security zones for specialized events and designated areas.

It is the desire of the parties to this Memorandum to continue and improve the nature and coordination of emergency assistance to incidents that threaten loss of life or property.

Management. The Charleston County Sheriff's Office shall be the host and lead agency of the Charleston Metro Marine Unit for administrative and training purposes. Pursuant to this Memorandum, all personnel assigned to the Metro Marine Unit shall work under the command of the host and lead agency's Officer in-Charge of the Charleston Metro Marine Unit when activated as part of the unit. The Officer in-Charge will in turn be responsible for coordinating all tasking orders and priorities with Public Safety and Homeland Security being the priority from participating agencies. Any other agency may participate upon agreement to the terms of this document.

Member Selection. The undersigned agency agrees to provide the following assets and personnel to the Charleston Metro Marine Unit in the event of an emergency and for training purposes (when available) : City of Charleston Fire Department - Marine Division Commander, (1) Fire supervisor, (2) Firefighters/1st Responder (EMT when available) Charleston County Sheriff's Office - one (1) lieutenant (Officer in Charge), one (1) supervisor, and six (6) vessel operators. The following Officers of the City of Charleston Fire Department have been assigned:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Training. All individual members of the Charleston Metro Marine Unit will attend all training mandated by their respective agencies. In addition, all members of the assigned units will attend training pertaining to the duties they will perform during an actual response call. Upon agreement by the participating Agencies, individual members may also attend additional training offered by reciprocal departments. The Charleston Metro Marine Unit will ensure members meet national qualification Standards as established by the National Association of State Boating Law Administrators (NASBLA) through their Boat Operation and Training Program (BOAT). Each member or their respective agency will be responsible for the costs of attending training.

Equipment and Facilities. Each agency may use equipment from their agencies in carrying out their duties of this Memorandum. All Marine vessels will be operated solely by the assigned vessel operators of the respective agencies except as may be determined by the Officer in-Charge in an event of an emergency or other exigent circumstance. The parties to this Memorandum shall retain ownership of any equipment and property each brings to the performance of this agreement and shall retain ultimate control of its own employees. Both parties shall also maintain and keep in force general public liability insurance against claims for personal injury, death, or property damage in an amount not less than that required under the South Carolina Tort Claims Act (S.C. Code Ann. §15-78-10, et seq.). The parties further agree that they shall be responsible for the acts of their own employees, agents, officers and/or representatives.

On missions solely at the request of the City of Charleston Fire Department, fuel cost will be the responsibility of the City of Charleston Fire Department, who will be invoiced by the other agency at the actual rate and within thirty (30) days of the other agency's incurring the fuel cost. In all other circumstances, each agency bears the costs associated with equipment and facilities used in connection with carrying out their duties of this Memorandum.

In the event that a party shall sustain a loss or damage to its equipment or injury to any of its personnel while acting pursuant to this agreement, unless a result of the negligent actions of the other party, such loss shall be the sole responsibility of the party who has sustained the damage or injury, and the other party shall not have any liability for such damage or injury. Should the loss or damage be the result of negligence or negligent actions of the other party, the non-responsible party shall retain all rights available for compensation under the laws of the State of South Carolina.

Records to be Maintained. All records of the activities of the Charleston Metro Marine Unit will be maintained by the Charleston Metro Marine Unit host and lead agency. The host and lead agency will maintain all training records and documentation through a web accessible records system (Current system is Power DMS). Copies of all records will be made available upon request.

Annual Review. Parties to this Memorandum agree to conduct an annual review of the operations of the Charleston Metro Marine Unit. Utilizing objective criteria, the member shall conduct an evaluation of long-term success of the operations. The member agencies shall meet and confer to make recommendations and a plan for implementation of improvement to the Charleston Metro Marine Unit. The annual review shall encourage the development of cooperative protocols and procedures, including but not limited to, communications, coordination, training and other activities that will enhance the ability of the fire departments to fulfill their missions.

Length, Modification and Termination. This Memorandum will remain in effect for one year from the date of its ratification and will automatically renew annually thereafter, unless an agency desiring not to renew notifies the remaining party in writing at least thirty (30) days prior to the annual renewal date. This Memorandum may only be modified in writing, signed by the respective head of each participating agency.

Legal Authority. The parties hereto acknowledge that this Memorandum is entered into pursuant to applicable South Carolina law.

Nature of Relationship Between Parties. No term or provision of this Memorandum is intended to, or shall, create any rights in any person, firm, corporation or entity not a party hereto, and no such person or entity shall have any cause of action hereunder.

In addition, no term or provision of this Memorandum is intended to create a partnership, joint venture or agency arrangement between the parties.

Costs. Other than the fuel cost set forth above in the paragraph entitled "Equipment and Facilities," it is specifically agreed by both parties that for a particular incident, neither party shall be reimbursed by the other party for any costs incurred pursuant to this Memorandum. In the event of Declared Disasters, the parties may apply for reimbursement from City, State and Federal agencies.

WITNESS OUR HANDS AND SEALS this ____ day of ____, 2014

Lt. P. C. Brack J. Al Cannon
Witness J. Al Cannon, Jr.
Sheriff, Charleston County

Witness Karen E. Brack
Chief, Charleston Fire Department

Witness Joseph P. Riley, Jr.
Mayor, City of Charleston


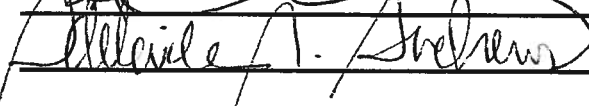
CPR COMMITTEE and/or COUNCIL AGENDA

7

TO: Joseph P. Riley, Jr., Mayor
FROM: Ross Eastwood / Michael Compton DEPT. Parks – Capital Projects
SUBJECT: **SPRING & CANNON STREETSCAPE, TWO-WAY CONVERSION, AND SIGNALIZATION CONSTRUCTION CONTRACT AND PROJECT BUDGET APPROVAL**
REQUEST: The approval of a construction contract with *AOS Specialty Contractors*, in the amount of \$4,193,007.57, for streetscape, two-way street conversion, and new signalization construction on Spring and Cannon Street corridors. The contract includes the base bid of \$3,918,609.92; Additive Bid #1, in the amount of \$218,397.65, for signalization; and Additive Bid #2, in the amount of \$56,000.00, for brick detail planters. With the approval of the project budget, Staff is authorized to award and/or amend contracts less than \$60,000, to the extent contingency funds exists in the Council Approved budget.

COMMITTEE OF COUNCIL: Ways & Means DATE: September 23, 2014

COORDINATION: This request has been coordinated with: *(attach all recommendations/reviews)*

	Yes	N/A	Signature of Individual Contacted	Attachment
Capital Project Director	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
CPR Committee Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
MBE Manager	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept/Div Parks /Capital Projects Acct # 050550-58240

Balance in Account \$4,902,007.57 Amount needed for this item \$4,193,007.57

NEED: Identify any critical time constraint(s).

CFO's Signature: 

FISCAL IMPACT: Approval of the construction contract will institute a \$5,852,127.13 project budget, of which the \$4,193,007.57 construction contract will be funded. The funding source for this project is Gateway TIF {\$5,852,127.13}.

Mayor's Signature: 
Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00 A.M ON THE DAY OF THE CLERK'S AGENDA MEETING.

**Spring and Cannon Streetscape
(050550)**

CP0107		Draft Project Budget	Expenses to Date	Encumbrances	Remaining Budget	Notes
DESIGN / ENGINEERING						
Division/Object						
050550-58238	Design, Engineering and Survey	\$ 265,000.00				KB Simmons Associates
050550-58238	Fee Amendment 1	\$14,674.00				KB Simmons Associates
050550-58238	Fee Amendment 2	\$59,900.00				KB Simmons Associates
050550-58238	Fee Amendment 3	\$4,150.00				KB Simmons Associates
050550-58238	Fee Amendment 4	\$22,744.00				KB Simmons Associates
050550-58238	Fee Amendment 5	(\$20,500.00)				KB Simmons Associates
050550-58238	Fee Amendment 6	\$228,130.50				KB Simmons Associates
050550-58238	Fee Amendment 7	\$37,712.50				KB Simmons Associates
050550-58238	Fee Amendment #8	\$ 209,371.83				KB Simmons Associates
	Subtotal Design Services Contract	\$ 821,182.83	\$ 608,651.03	\$ 212,531.80	\$ -	
050550-58238	Surveying	\$ 15,620.00	\$ 10,267.40	\$ 5,352.60	\$ -	Davis & Floyd for KB Simmons
050550-58238	2-way Conversion Design Exception	\$ 15,481.60	\$ 15,481.60	\$ -	\$ -	Davis & Floyd - P112256
050550-58238	Road Paving Surveys	\$ 29,660.00	\$ 16,430.99	\$ 13,229.01	\$ -	Davis & Floyd - P125780
050550-58238	Materials Testing	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	
050550-58238	Additional Construction Administration	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	
050550-58238	Storage Container Rental for Light Poles	\$ 1,531.00	\$ 1,030.80	\$ 500.20	\$ -	P-Card Purchase with Dixie Temporary Storage
050550-58236	Advertising	\$ 944.13	\$ 944.13	\$ -	\$ -	\$90 PO is with The Chronicle & \$854.13 is P&C
050550-58016	Printing expenses	\$ 500.00	\$ 189.20	\$ 310.80	\$ -	P-card purchase for A&E Printing
050550-52000	Office Expenses	\$ 200.00	\$ 74.01	\$ 125.99	\$ -	P-card purchase
TOTAL D/E COSTS		\$ 950,119.56	\$ 653,069.16	\$ 232,050.40	\$ 65,000.00	
CONSTRUCTION						
050550-58240	Streetscape, Two-way Conversion and Signalization Construction	\$ 4,193,007.57	\$ -	\$ 4,193,007.57	\$ -	AOS Specialty Contractors; Contract includes Base Bid and Bid Alternates 1 &2)
TOTAL CONSTRUCTION COSTS		\$ 4,193,007.57	\$ -	\$ 4,193,007.57	\$ -	
050550-52940	Contingency	\$ 709,000.00	\$ -	\$ -	\$ 709,000.00	12 percent contingency
TOTAL PROJECT COSTS		\$ 5,852,127.13	\$ 653,069.16	\$ 4,425,057.97	\$ 774,000.00	
FUNDING						
YEAR	SOURCE	AMOUNT				
	Gateway TIF	\$ 6,345,188.00		Streetscape, Signalization, & Two-way conversion		
2015	Gateway TIF	\$ 700,000.00		Add'l funding to complete Streetscape phase		
2014	General Fund Reserves	\$ 1,200,000.00		Funding for Two-way conversion and Signalization.		
	Gateway TIF	\$ 318,144.44				
	Cost recorded in 050553-King St. Pole Lighting Division	\$ (318,144.44)				
TOTAL FUNDING		\$ 8,245,188.00				
PROJECT SUMMARY						
TOTAL PROJECT COST		\$ 5,852,127.13				
TOTAL PROJECT FUNDING		\$ 8,245,188.00				
PROJECT BALANCE		\$ (2,393,060.87)				

Spring / Cannon Streetscape and Two Way Traffic Conversion Project

Bid Opening Checklist

Wednesday, August 06, 2014 @ 2:00 P.M.
City of Charleston Department of Parks
823 Meeting Street 2nd Floor, Charleston, SC 29403

Proposed Bidders	Total Base Bid	Alt. 1	Alt. 2	Bid Bond	Add. 1-3	MWBE	AIA Doc. 305
✓ AOS Construction	\$ 3,918,690.92	\$ 218,397.45	\$ 56,000.00	✓	✓	✓	✓
2 Anson Construction	\$ —	\$ —	\$ —	✓	✓	✓	✓
✓ Chandler Construction	\$ 5,679,090.00	\$ 202,491.00	\$ 72,800.00	✓	✓	✓	✓
✓ Gulf Stream Construction	\$ 7,028,452.42	\$ 198,755.58	\$ 52,440.00	✓	✓	✓	✓

James P. Brown
August 8, 2014
POC: SACARON
8/8/14

AIA® Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Charleston
Department of Parks
Capital Projects Division
823 Meeting Street
Charleston, SC 29403
Telephone Number: 843-724-7324
Fax Number: 843-724-7300

and the Contractor:
(Name, legal status, address and other information)

AOS Specialty Contractors, Inc.
1224 Two Notch Road
Lexington, SC 294073
Telephone Number: 803-798-6831

for the following Project:
(Name, location and detailed description)

CP0107 Spring/Cannon Streetscape Two Way Traffic Conversion
Spring and Cannon Streets, Charleston, SC.

The Architect:
(Name, legal status, address and other information)

Lead A/E
Davis & Floyd, Inc.
3229 West Montague Avenue
North Charleston, SC 29418
843-554-8602

Sub-A/E
Kenneth B. Simmons Associates, LLC
2711 Middleburg Drive, Suite 210
Columbia, SC 29204
Telephone Number: 803-254-3791

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	TERMINATION OR SUSPENSION
7	MISCELLANEOUS PROVISIONS
8	ENUMERATION OF CONTRACT DOCUMENTS
9	INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

(Paragraphs deleted)

The commencement date will be fixed in a Notice to Proceed.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Four Hundred Fifty (450) calendar days from the date of commencement,

(Paragraphs deleted)

(Table deleted)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Failure to achieve Substantial Completion on time shall result in the assessment of liquidated damages in the amount of one thousand four hundred dollars (\$1,400.00) per day.

Init.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Million one hundred ninety three thousand seven Dollars and fifty seven cents (\$4,193,007.57), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Alternate No.1 in the amount of \$ 218,397.65 and Alternate No.2 in the amount of \$ 56,000.00.

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

(Table deleted)

Refer to AOS Specialty Contractors Bid Form, dated August 6th, 2014.

§ 4.3.1 Such unit prices are considered complete and include: (i) all materials, equipment, labor, delivery, installation, overhead and profit; and (ii) any other costs or expense in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
01 – Owners Allowance	\$ 150,000.00
02 – Utility Allowance	\$ 150,000.00

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

(Paragraphs deleted)

§ 5.2.2 Final payment shall be made within 30 days from the date the A/E receives the final undisputed Application for Payment, including all supporting documentation from the Contractor. All conditions stipulated in the General Conditions of the Contract for Construction, as amended, shall be met before final payment is made.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1

(Paragraphs deleted)

The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007 General Conditions of the Contract for Construction, as amended.

§ 6.2

(Paragraphs deleted)

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007 General Conditions of the Contract for Construction, as amended.

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ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.

(Insert rate of interest agreed upon, if any.)

(0.0) per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative:
(Name, address and other information)

Ross Eastwood
City of Charleston
Department of Parks
Capital Projects Division
823 Meeting Street, 2nd Floor
Charleston, SC 29403
Telephone Number: 843-579-7552

§ 7.4 The Contractor's representative:
(Name, address and other information)

Dianne Rushing
AOS Specialty Contractors, Inc.
1224 Two Notch Road
Lexington, SC 294073
Telephone Number: 843-795-4000

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

§ 7.6.1 Contractor shall not incur any expense chargeable to the Owner on or about the Work of this Agreement until the Notice to Proceed is issued.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 8.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor, as amended.

§ 8.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as amended.

§ 8.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
1232	Supplemental Conditions	July 1 st , 2014	14

1233	Allowance	July 1 st ,2014	2
1235	Field Engineering	July 1 st ,2014	1
1236	Regulatory Requirements	July 1 st ,2014	1
1237	Permits and Rights-Of-Way	July 1 st ,2014	1
1238	Preconstruction Conference	July 1 st ,2014	1
1239	Project Meetings	July 1 st ,2014	2
1240	Construction Schedule	July 1 st ,2014	4
1250	Measurements and Payment	July 1 st ,2014	8
1410	Testing Laboratory Services	July 1 st ,2014	2
1640	Product Handling	July 1 st ,2014	2
1720	Project Record Documents	July 1 st ,2014	2

§ 8.1.4 The Specifications are those contained in the Project Manual dated July 1st, 2014 as in Section 8.1.3 and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Refer to Exhibit A - Project Manual Table of Contents.

§ 8.1.5 The Drawings are as follows, and are dated July 1st, 2014 unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

C1	Cover Sheet
A1	General Notes
S1-S25	Survey and Demolition Notes
GR1-GR29	Grading Plans
LP1-LP	Layout and Planting Plans
DT1-DT4	Details
SM1-SM11	Signage/Pavement Marking Plans
TS1-TS11	Traffic Signal Plans Alt.#1
TS1-TS11	Traffic Signal Plans Alt.#2

§ 8.1.6 The Addenda, if any:

Number	Date	Pages
1	July 22, 2103	3
2	July 24, 2104	1
3	July 29, 2105	10

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Portions of the Project Manual dated July 1st, 2014, including 1. Instruction to Bidders, 2. Bid Form and 3. MWBE Compliance Provisions and Affidavits.

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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

Joseph P. Riley, Jr, Mayor
(Printed name and title)



CONTRACTOR (Signature)

Ms. Dianne Rushing President
(Printed name and title)
AOS Specialty Contractors, Inc.

Project Name: Spring/Cannon Streetscape and Two Way Traffic Conversion CP0107
(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraph deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Table deleted)(Paragraphs deleted)(Paragraphs deleted)

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AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

CP0107 Spring/Cannon Streetscape Two Way Traffic Conversion
Spring and Cannon, Charleston, SC

THE OWNER:

(Name, legal status and address)

City of Charleston
Department of Parks
Capital Projects Division
823 Meeting Street, 2nd Floor
Charleston, SC 29403

THE ARCHITECT:

(Name, legal status and address)

Lead A/E
Davis & Floyd Inc.
3229 West Montague Avenue
North Charleston, SC 29418

Sub A/E

Kenneth B. Simmons Associates, LLC
2711 Middleburg Drive, Suite 210
Columbia, SC 29204

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes:

(1466919030)

12 UNCOVERING AND CORRECTION OF WORK

13

(Paragraphs deleted)

MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. The Contract Documents also include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid proposal or portions of Addenda relating to bidding requirements (the "Bid Documents"). Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. In the event of any conflict among the Contract Documents, the Documents shall be construed according to the following priorities:

Highest Priority:	Change Order, and Construction Change Directive, with later date having priority.
Second Priority:	Agreement.
Third Priority:	Addenda with later date having greater priority.
Fourth Priority:	Modifications to General Conditions.
Fifth Priority:	General Conditions.
Sixth Priority:	Drawings and Specifications.
Seventh Priority:	Bid Documents

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except as set forth in Paragraph 5.4, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

(Paragraphs deleted)

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 OWNER

The Owner, institution or department that is a party to the Contract. For purposes of the Contract, the term Owner shall be the City of Charleston, whether or not the City of Charleston owns the site or the building.

§ 1.1.9 NOTICE TO PROCEED

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A document issued by the owner to the Contractor (with a copy to A/E) fixing the date on which the contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall:

1.2.1.1 provide the better quality or greater quantity of Work; or,

1.2.1.2 comply with the more stringent requirement; either or both in accordance with the A/E's interpretation.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written addendum to the Contract.

§ 1.2.5 The Contractor and all subcontractors shall refer to all the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of the Sections of the Specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the indicated results.

§ 1.2.6 All indications or notations which apply to one or a number of similar situations, matters or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements, and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions, unless otherwise indicated in the Contract Documents.

§ 1.2.10 Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show the exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed.

§ 1.2.11 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or Work, unless otherwise specified.

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§ 1.2.12 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.13 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The A/E will assist the Owner and Contractor with the execution of the Contract. The A/E will identify and assist in the correction of any incomplete, missing or unsigned documents upon request of the Owner.

§ 1.5.2 The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

§ 1.5.3 The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants.

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Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Owner shall retain all common law, statutory and other reserved rights, in addition to the limited use copyright, in accordance with the contract between the Owner and the A/E for this Project.

§ 1.7 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.2 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Neither the Owner nor the A/E shall be required to conduct investigations or to furnish the Contractor with any information concerning subsurface characteristics or other conditions of the areas where the Work is to be performed beyond that which is provided in the Contract Documents. The Contractor shall not be entitled to rely on the accuracy of any information or services provided pursuant to this Subparagraph.

§ 2.2.3 The Contractor will be furnished, free of charge, three (3) sets of the Drawings and the Project Manual and will be furnished, at actual cost to the Owner, as many additional copies as it may require.

(Paragraphs deleted)

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 If, after achieving Substantial Completion, the Contractor then defaults, or neglects to complete or fails to provide resources adequate to complete the Project within the adjusted Contract Time for Final Completion as defined in Subparagraph 8.2.5, the Owner may carry out the work after giving the Contractor a single seven-day written notice of the Contractor's default or neglect. In such case an appropriate Change order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure.

If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the State of South Carolina. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences

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and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.1.1 The Contractor shall not allow the use of asbestos containing products, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, even if the products are nonfriable and/or contain minimal amounts of asbestos, and even though such products may still be legally installed.

§ 3.4.1.2 The Contractor shall not allow the use of lead materials in public water applications. Lead free solder, flux and pipe must be used in all public drinking water and wastewater applications. Lead free solder and flux are defined as containing less than 0.2% lead, while valves, pipes and appurtenances must contain less than 8.0% lead.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1.1 Unless caused by the Contractor, the Contractor's warranty excludes remedy of damage or defect caused by abuse, modifications not performed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Architect, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.

§ 3.5.3 In all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, the Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by the Contractor and approved in writing by the Architect as provided in Subparagraph 3.5.4.

§ 3.5.4 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Architect in writing of the nature of such deviations at the time the material is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

§ 3.5.5 In requesting approval of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Architect, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Architect may reject such substitution or deviation without further investigation.

§ 3.5.6 The Contract Documents are intended to produce a Project of consistent character and quality of design. All components of the Project including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the Project. The Architect will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve as equal to materials specified, proposed substitutes which, in the Architect's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Architect, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the Owner.

§ 3.5.7 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was made at the written request or direction of the Owner or the Architect.

§ 3.5.8 The warranty provided in this Paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.9 The Contractor shall procure and deliver to the Architect, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 The Contractor shall comply with all State and Federal law with respect to withholding taxes for nonresidents, employees, contractors and subcontractors.

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§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the business license, building permit, as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

(Paragraph deleted)

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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This Schedule Shall:

3.10.1.1 indicate the dates for the start and completion of the various elements of the Work, and shall be affirmed or revised monthly as required by conditions of the Work and upon execution of a Change Order that affects time.

3.10.1.2 provide a graphic representation of activities and events that will occur during performance of the Work in sufficient detail, and as acceptable to the Owner, to show the sequencing of the various trades for each floor level, wing, or work area;

3.10.1.3 identify each phase of construction and occupancy; and

3.10.1.4 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates").

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner.

3.10.3.1 If the Contractor submits a schedule or schedule progress report indicating an intention to achieve Substantial or Final Completion of the Work or any portion thereof, prior to any completion date required by the Contract Documents or to the expiration of the Contract Time, no liability to the Owner for any failure of the Contractor to do so complete the Work shall be created or implied. The Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time for failure to achieve such early completion dates.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal

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schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

3.12.5.1 Sprinkler shop drawings shall be prepared by a licensed sprinkler Contractor. The sprinkler shop drawings shall be reviewed and approved by the A/E's engineer of record before submittal to the City of Charleston Fire Marshal or other authorities having jurisdiction.

3.12.5.2 The Contractor shall submit a copy of the City of Charleston Fire Marshal's approval letter to the A/E.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 When professional certification of materials, systems or equipment is required by the Contract Documents, the A/E shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

§ 3.13 USE OF SITE

The right of possession of the Project site and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the Project site, including the Contractor's apparatus, the storage of materials, and the operations of the Contractor's workmen to limits indicated by law, ordinances, the Contract Documents, and permits and/or directions of the Architect and shall not unreasonably encumber the Project site with the Contractor's materials. The Owner shall not be liable to the Contractor, the subcontractors, their employees, or anyone else with respect to the conditions of the Project site, except only for a condition caused directly and solely by the negligence of the Owner.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 The Contractor shall indemnify, hold harmless and defend the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, demands, damages, losses and expenses, including reasonable attorney's fees, arising out of the performance of the Work, to include but not be limited to claims for bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself), regardless of whether such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the A/E, the A/E's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving of or the failure to give directions or instructions by the A/E, the A/E's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The term "Architect," "Architect/Engineer," or "A/E" is the entity named as such in the "Invitation For Construction Bids".

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. Notwithstanding these responsibilities, no act or omission by the A/E shall be considered a waiver of any of the Owner's rights or interests. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The A/E, as a representative of the Owner, will visit the site as necessary to fulfill its obligations to the Owner for inspection services, and, at a minimum, to assure conformance with the A/E's design as shown in the Contract Documents and to observe the progress and quality of the various components of the Contractor's Work. The A/E will (1) keep the Owner informed about the progress and quality of Work completed, (2) endeavor to guard the Owner against defects and deficiencies in the Work, and (3) determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Work completed and correlated with the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The A/E will, in the first instance, interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Upon receipt of such request, the A/E will promptly notify the non-requesting party in writing of the details of such request. The A/E's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the A/E shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the A/E to furnish such interpretations until fourteen (14) days after written request is made for them.

4.2.11.1 Subject to review pursuant to Paragraphs 4.3, 4.4 and 4.5, as appropriate, the Contractor shall proceed diligently with performance of the Contract in accordance with the A/E's written interpretations or decisions and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the design as indicated in and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The A/E's interpretations and initial decisions may be, but need not be, accorded any deference in any review conducted under the terms of the Contract or in law. Any such review shall be *de novo*.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 In the Specifications or on the Drawings, where the words "as directed," "as required," "as approved," "as permitted" or words of like effect are used, it is to be understood that direction, requirement, approval or permission of the A/E is intended. Similar words, such as "approved," "acceptable," "satisfactory," or words of like import mean approved by, acceptable to, or satisfactory to the A/E.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes between the Owner and Contractor arising out of or relating to the Contract. Claims under this Contract must be submitted in writing to the Architect. A voucher, invoice, payment application or other routine request for payment that is not in dispute when submitted is not a Claim under this definition. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits for Filing Claims. Claims by either party arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except as stated for adverse weather days in Clause 4.3.7.2. Claims must be initiated by written notice to the Architect. By failing to give written notice of a Claim within the time required by this Subparagraph, a party expressly waives its claim.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which existed at the time of bidding and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment may be referred to the Architect for an advisory determination.

§ 4.3.4.1 Any adjustment, including reasonable overhead and profit, in the Contract Sum, or to the Contract Time made pursuant to this Subparagraph shall be determined in accordance with Paragraphs 7.5 and 4.3.7 of this Contract, respectively.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Claims for Additional Time

§ 4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. Claims for an increase in the Contract Time shall be based on one additional calendar day for each full calendar day that the Contractor is prevented from working.

§ 4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.7.2.1 Claims for adverse weather shall be based on actual weather conditions at the job site or other place of performance of the Work, as documented in the Contractor's job site log.

§ 4.3.7.2.2 For the purpose of this Contract, a total of five (5) calendar days per calendar month (non-cumulative) shall be anticipated as "adverse weather" at the job site, and such time will not be considered justification for an extension of time. If, in any month, adverse weather develops beyond the five (5) days, the Contractor shall be allowed to claim additional days to compensate for the excess weather delays only to the extent of the impact on the approved construction schedule. The remedy for this condition is for an extension of time only, not money.

§ 4.3.7.2.3 The Contractor shall submit monthly a claim with its pay application for adverse weather conditions that have occurred during the previous month. The A/E shall review each monthly submittal in

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accordance with Paragraph 4.4 and inform the Contractor and the Owner promptly of its evaluation. Approved days shall be included in the next Change Order issued by the A/E. Adverse weather conditions not claimed within the time limits of this Subparagraph shall be considered to be waived by the Contractor. Claims will not be allowed for adverse weather days that occur after the scheduled (original or adjusted) date of Substantial Completion.

§ 4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.9 Quantity Variations. If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen (15) percent above or below the estimated quantity, an adjustment, including overhead and profit, in the Contract Sum shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 15 percent or below 85 percent of the estimated quantity. Any adjustment in the Contract Sum made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, as set forth in Subparagraph 4.3.7. Pursuant to Paragraph 13.13, the A/E shall determine the actual quantities of a unit-priced item used by the Contractor.

§ 4.3.10 Claims for Listed Damages

Notwithstanding any other provision of the Contract Documents, including Subparagraph 1.2.1, but subject to a duty of good faith and fair dealing (S.C. Code Ann § 11-35-30), the Contractor and Owner waive Claims against each other for Listed Damages arising out of or relating to this Contract. The Listed Damages are:

4.3.10.1 Damages incurred by the Owner for rental expenses, for losses of use prior to Final Completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and for attorney's fees, insurance and interest (excluding post-judgment).

4.3.10.2 Damages incurred by the Contractor for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation; for loss of profit except anticipated profit arising directly from the Work; and for attorney's fees, insurance and interest (excluding post-judgment).

4.3.10.3 This mutual waiver is applicable, without limitation, to all Listed Damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 4.3.10 shall be deemed to preclude an award of liquidated damages when applicable, in accordance with the requirements of the Contract Documents. This Subparagraph does not apply to Paragraph 3.18.

4.3.11 Waiver of Claims Against the A/E. Notwithstanding any other provision of the Contract Documents (including paragraph 1.2.1), but subject to a duty of good faith and fair dealing, the Contractor waives all claims against both the A/E and any other design professionals who provide design and/or project management services to the Owner, either directly or as independent contractors/subcontractors to the A/E, for Listed Damages arising out of or relating to this Contract. The Listed Damages are damages incurred by the Contractor for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss or profit other than anticipated profits arising directly from the Work, and for attorney's fees, insurance, and interest (excluding post-judgment).

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 DECISION OF THE A/E. Claims, including those alleging an error or omission by the A/E, shall be referred initially to the A/E for decision. An initial decision by the A/E shall be required as a condition precedent to resolution (pursuant to Paragraph 4.5) of all claims between the Contractor and Owner arising prior to the date Final Payment is due, unless thirty (30) days shall have passed after the Claim has been referred to the A/E, with no decision by the A/E. If the A/E's initial decision is not accepted by the parties, the parties shall continue in attempts to arrive at a satisfactory resolution, subject to rights accorded in Sec. 4.5 in the event these efforts fail.

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§ 4.4.2 The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The A/E's initial decision will be delivered to the parties within two weeks of receipt of any response or supporting data requested pursuant to Subparagraph 4.4.4, or within such longer period as may be mutually agreeable to the parties. If the A/E's initial decision is accepted by the parties, the A/E shall prepare a Change Order with appropriate supporting documentation for the review and approval of the parties. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to resolution pursuant to Paragraph 4.5. Any review of the A/E's written decision or determination shall be *de novo*.

§ 4.4.4 If the A/E renders its initial decision after proceedings pursuant to the Paragraph 4.5 have been initiated, such decision may be entered as evidence, but shall not supersede such proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.5 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.5 DISPUTE RESOLUTION

§4.5.1 Without limiting Subparagraph 4.5.2, any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the A/E or thirty (30) days after submission of the Claim to the A/E, be subject to resolution pursuant to Subparagraph 4.5.2.

§4.5.2 Either party may pursue any Claim against the other in the Court of Common Pleas for Charleston County, South Carolina, provided the party has first complied with the provisions of Paragraphs 4.3 and 4.4 with respect to such Claim. Nothing herein shall be construed to prevent mediation of any Claims upon the mutual consent of the parties.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.. The Contractor's Request for Substitution must be made to the A/E in writing, accompanied by supporting information.

§ 5.2.5 The substitution of a subcontractor is governed by the laws of the State of South Carolina. Paragraph 5.2 is to be construed as complementary thereto.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following:

§ 5.3.2.1 An agreement that the Owner is a third-party beneficiary of the Subcontract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, expressed or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement; and,

§ 5.3.2.2 A requirement that the Subcontractor (or Sub-subcontractor) promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has, or should have had, knowledge; and,

§ 5.3.2.3 The following Paragraphs or Subparagraphs as appropriate, of the Conditions of the Contract: 3.2, 3.5.1, 3.18, 4.3.10, 5.4, 13.1.1, 13.13, 14.3 and 14.4; and.

§ 5.3.3 The Contractor shall assure the Owner, by affidavit or in such other manner as the Owner may approve, that all agreements between the Contractor and its Subcontractor(s) incorporate the provisions of Subparagraph 5.3.1 and 5.3.2 as necessary to preserve and protect the rights of the Owner and the A/E under the Contract Documents with

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respect to the work to be performed by Subcontractors so that the subcontracting thereof will no prejudice such rights.

§ 5.3.4 Upon request, the Contractor shall provide to the Owner copies of all executed or issued subcontracts, purchase orders and other documents related to the Work.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

(Paragraph deleted)

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.
- .4 The Contractor shall not proceed with the Work of the Change Order until the Change Order is approved by the Owner. Any adjustment in the Contract Sum made pursuant to this Paragraph 7.2 shall be determined in accordance with Paragraph 7.5 of this Contract.
- .5 All Change Orders shall be submitted on City of Charleston form, "Construction Change Order," with appropriate documentation attached.

§ 7.2.2 Agreement on any Change Order shall constitute a release by the Contractor of the Owner for any and all liability under this Contract attributable to such facts or circumstances giving rise to the Change Order.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3

(Paragraphs deleted)

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Any adjustment in the Contract Sum, including reasonable overhead and profit made pursuant to Paragraph 7.3 shall be determined in accordance with Paragraph 7.5 of this Contract.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the A/E as provided in Clause 7.5.1.5, on the basis of reasonable expenditures and savings to those performing the Work attributable to the change, including allowances for reasonable overhead and profit.

§ 7.3.7

(Paragraphs deleted)

When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.3.8 If the Contractor defaults or neglects to execute a Change Directive, the Owner may carry out the Work in accordance with Paragraph 2.4 and Article 6.

§ 7.3.9 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

(Paragraph deleted)

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 7.5 PRICE ADJUSTMENTS

§ 7.5.1 Methods of Adjustment. Any adjustment in the Contract Sum made pursuant to this Paragraph 7.5 shall be consistent with this Contract and shall be arrived at through whichever one of the following ways in the most valid approximation of the actual cost to the Contractor.

7.5.1.1 by agreement on a fixed price adjustment;

7.5.1.2 by unit prices specified in the Contract or subsequently agreed upon;

7.5.1.3 by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

7.5.1.4 in such other manner as the parties may mutually agree; or,

7.5.1.5 in the absence of agreement by the parties, through a unilateral initial determination by the A/E of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the A/E in accordance with Clause 7.5.3.2, but subject to final resolution in accordance with the provisions of Paragraph 4.5, it being acknowledged that the unilateral initial interpretation by the A/E is respected, but advisory.

§ 7.5.2 Final Agreement

When any adjustment in the Contract Sum made pursuant to clauses in this Contract becomes final (e.g., by agreement or dispute resolution), the adjustment shall be computed and documented on City of Charleston "Construction Change Order."

§ 7.5.3 DOCUMENTATION OF COST REASONABLENESS

§ 7.5.3.1 Contractor's Change Order Proposal. The Contractor shall submit a written proposal for review by the A/E and the Owner. The proposal shall be submitted to the Owner's representative within the time limits specified in the Subparagraph 4.3.2. All costs claimed by the Contractor shall be justifiable compared with prevailing industry standards, as adjusted for local cost conditions. Costs shall be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon thereafter as practicable.

§ 7.5.3.2 Construction Change Directives. For a Construction Change Directive wherein the proposed method of compensation is actual costs, and pending the collection and evaluation of actual costs as required Clause 7.5.1.3, the Contractor shall estimate the value of the changed work. The Contractor shall itemize the estimated cost into building components and shall use the labor, material and equipment unit direct costs as listed in the most current issue of the Construction Cost Data Book most applicable to the nature of the changed work, as published by R.S. Means, with a cost index adjusted for the project locale. The Contractor shall also be permitted to add overhead and profit as shown in Subparagraph 7.5.4. Where the Contractor does not properly itemize the proposed costs as requested, the A/E shall provide the Owner with the itemization and this amount shall be the initial basis for compensation under Subparagraph 7.3.8. Upon conversion of the Construction Change Directive to a Change Order, the A/E's cost for providing this itemization shall be deducted from the final adjustment in the Contract Sum as described in Clause 7.3.9.

§ 7.5.4 Agreed Overhead And Profit Rates

§ 7.5.4.1 For any adjustment to the Contract Sum for which overhead and profit may be recovered, other than those made pursuant to Subparagraph 4.3.9, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to: field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is defined as profit on work performed by others. The allowable percentages for overhead, profit, and commission area as follows:

1. To the Contractor or subcontractors on work performed by their own forces:

Overhead (%)	Profit (%)	Commission (%)
10	7	0

2. To the Contractor on work performed by its subcontractors:

Overhead (%)	Profit (%)	Commission (%)
10	0	3

3. To a first tier subcontractor on work performed by its subcontractors:

Overhead (%)	Profit (%)	Commission (%)
10	0	3

§ 7.5.4.2 Not more than three levels of overhead, profit, and commission shall be allowed regardless of the number of subcontractor tiers.

§ 7.5.4.3 The Contractor or subcontractor shall not be allowed overhead or commission on the overhead, profit, and/or commission received by its subcontractors.

§ 7.5.4.4 Using the percentages stated in Clause 7.5.4.1, any adjustment to the Contract Sum for deleted work shall include any overhead, profit and/or commission attributable to the cost for the deleted Work.

§ 7.5.4.5 If the Contractor initiates a Change Order proposal and the Owner is not obligated to pay for all or any part of the proposal, then the Contractor shall be responsible for any A/E's fees to evaluate and process that Change Order proposal. Compensation shall be based on the Owner's contract with the A/E and the rates for Additional Services contained therein, and shall be withheld from the final payment.

§ 7.5.5 Cost Or Pricing Data

§ 7.5.5.1 The Contractor shall submit cost or pricing data for any element of changed Work (other than Unit Price Work), and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of the pricing. This data shall be itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent Work, or as soon thereafter as practicable, and shall be justifiably compared with prevailing industry standards, as adjusted for local conditions. As requested by the A/E or the Owner, the Contractor's submittal shall provide an itemized breakdown of all increases and decreases in the Contract for the Contractor and each subcontractor (at any tier) in at least the following detail: material, equipment and supply quantities and costs; direct labor hours and rates for each trade; the associated FICA, FUTA, SUTA, and Worker's Compensation Insurance; equipment hours and rates, and costs of premiums for bonds and insurance, permit fees and sales, use or similar taxes related to the Work.

§ 7.5.5.2 Any Change Order or Change Directive for which certification is required shall contain a provision that the price to the Owner, including profit or fee, shall be adjusted to exclude any significant sums by which the Owner finds that such price was increased because the cost or pricing data furnished by the Contractor was inaccurate, incomplete or not current as of the date agreed upon between the parties. Notwithstanding Subparagraph 9.10.4, such adjustments may be made after final payment and shall not be deemed to be waived.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 Failure by the Contractor to commence actual physical work on the project within twenty-one (21) days from the Date of Commencement, as established in the Notice to Proceed, will entitle the Owner to consider the Contractor in substantial breach of its obligations under this Contract. In this event, the Owner may withdraw the Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

§ 8.2.5 Within two (2) weeks after award of the Contract, the Contractor shall submit to the Architect a Progress Schedule showing for each class of work included in the Schedule of Values, the percentage completion to be obtained and the total dollar value of work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but not including the value of materials delivered but not in place.

§ 8.2.6 The Progress Schedule shall be based on an orderly progression of the Work, allowing adequate time for each operation (including adequate time for submission and review of submittals), and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The Progress Schedule will be reviewed by the Architect for compliance with the requirements of this Article and will be accepted by the Architect or returned to the Contractor for revision and resubmittal. Unless specifically required by law, no payment under this Contract shall be due until the Progress Schedule has been approved by the Architect.

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§ 8.2.7 If in any Application for Payment the total value of the completed work in place, as certified by the Architect, is less than 90% of the total value of the work in place estimated in the Progress Schedule, the Owner may, at the Owner's option, require the Contractor to accelerate the progress of the Work without cost to the Owner by increasing the work force or hours of work, or by other reasonable means approved by the Architect.

§ 8.2.8 If each of three successive applications, as certified by the Architect, indicate that the actual work completed is less than 90% of the values estimated in the Progress Schedule to be completed by the respective dates, the Owner may at the Owner's option, treat the Contractor's delinquency as a default justifying the action permitted under Paragraph 14.2.

§ 8.2.9 If the Architect has determined that the Contractor should be permitted to extend the time for completion as provided in Paragraph 8.3, the calendar dates in the Progress Schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of work to be completed as of the first of each month shall be adjusted prorata.

§ 8.2.10 If the Contractor fails to submit any Application for Payment in any month, the Architect will, for the purpose of this evaluation of progress, certify separately to the actual value of the work in place completed as of the first of the month to the best of the Architect's knowledge.

§ 8.2.11 Nothing herein shall limit the Owner's right to liquidated damages for delays by the Contractor or to any other remedy which the Owner may possess under other provisions of the Contract Documents or by law.

§ 8.2.12 The Contractor shall prepare Daily Reports of job site activities in a form provided by the Owner. Reports shall be submitted to the Owner and the A/E on a weekly basis.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.7.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications, or instructions or to return Shop Drawings or samples until fifteen (15) days after receipt by the Architect by registered or certified mail of written demand for such instructions, Drawings, or Samples, and not then unless such claim be reasonable.

§ 8.3.5 The Contractor hereby agrees that the Contractor shall have no Claim for damages of any kind against the Owner or the Architect on account of any delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Architect, or otherwise. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time provided in this Article.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 As requested by the A/E, the Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized format approved by the A/E and Owner. The breakdown shall be divided into detail sufficient to exhibit areas, floors, and/or sections of

the Work, and/or by convenient units and shall be updated as required by either the Owner or the A/E as necessary to reflect:

§ 9.2.1 the description of Work (listing labor and material separately);

§ 9.2.2 the total value;

§ 9.2.3 the percent and value of the Work completed to date;

§ 9.2.4 the percent and value of previous amounts billed; the current percent completed and amount billed; and,

§ 9.2.5 the current percent completed and amount billed.

Any schedule of values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work, shall be rejected. If either the schedule of values or trade breakdown had been initially approved and subsequently used, but later was found improper for any reason, then sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values no more often than monthly. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. The Contractor's Application for Payment shall be in a form acceptable to the Owner. The A/E will authorize, as provided in Paragraph 9.4 and until the final pay request, monthly payments equal to ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the Work, and allocable to material and equipment suitably stored until the total value of the completed Work in place is less than fifty percent (50%), as certified by the Architect, at which time the above-stated ninety percent (90%) shall be modified, at the option of the Owner, to ninety-five percent (95%) of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the Work, and allocable to material and equipment suitably stored. After fee reduction has taken place, if the quality or progress of the work decreases or slows down, in the opinion of the architect, full retainage may be reinstated until the completion of work.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that the title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the Construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens". The Contractor further agrees that the submission of any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work for which the Contractor may then be entitled, provided that such waiver of the lien rights shall not waive the Contractor's right to payment for such work.

§ 9.3.4 Each Application for Payment or periodic estimate requesting payment shall be accompanied at the Owner's option by (i) a waiver of liens from each subcontractor or (ii) a certificate from each subcontractor stating that the subcontractor has been paid all amounts due the subcontractor on the basis of the previous periodic payment to the

Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Architect. Such waiver or certificate shall be in a form acceptable to the Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.
- .8 a lien or attachment is filed contrary to Subparagraph 4.5.9; or
- .9 failure of mechanical trade or electrical trade subcontractors to comply with mandatory requirements for maintaining record drawings. The contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the Architect before approval of the Contractor's monthly payment requisition.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

(Paragraph deleted)

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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§ 9.6.1.1 Contractor's attention is directed to §11-35-3030(4) of the SC Code of Laws, as amended, and the Project Manual concerning release of retained funds. If partial release of retainage is requested by the Contractor, application shall be accompanied by AIA Document G707A, Consent of Surety to Reduction in or Partial Release of Retainage.

§ 9.6.1.2 Contractor shall properly disburse money received from all payments to all laborers, subcontractors or materialmen in accordance with Title 29, Chapters 6 and 7 of the SC Code of Laws, as amended.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

(Paragraph deleted)

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor within thirty (30) days after the date the Contractor's Application for Payment is certified by the A/E, then the Contractor may, upon fourteen (14) additional days written notice to the Owner and A/E, stop the Work until payment of the amount owing has been received. The Contract Time shall be appropriately extended and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and startup, which shall be accomplished as provided in Paragraph 7.5.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete and the premises comply with Subparagraph 3.15.1, the Contractor shall submit to the Architect (i) a list of items to be completed or corrected, (ii) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect, and (iii) the permits and certificates referred to in Subparagraph 13.5.4. The failure to include any items on the list mentioned in the preceding sentence shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, and the other conditions have been met, the Architect will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificates.

§ 9.8.2.1 The Contractor's list shall be in writing and attached to the "Contractors Request for Certificate of Substantial Completion", which shall be submitted at least ten (10) days in advance of the proposed date of inspection and shall be forwarded through the A/E, who will attach its written endorsement as to whether or not it concurs with the Contractor's statement that the Work will be ready for inspection and testing on the date given. The A/E's endorsement is a convenience to the Owner only and shall not relieve the Contractor of its responsibility in the matter, nor shall the A/E's endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. In the event that the A/E does not concur with the Contractor's statement, the A/E shall inform the Contractor of the basis for the A/E's non-concurrence. The Contractor may then, at its sole option, (i) defer the inspection; or, (ii) request the inspection be performed in accordance with Subparagraph 9.8.3.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.3.1 Inspection and testing shall take place at a time (s) mutually agreeable to the Contractor, Owner and A/E.

§ 9.8.3.2 The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the A/E's issuance of a written list of Unfinished Work and Defective Work, commonly referred to as a "punch list", each item of which must be finished and correct prior to Final Completion.

§ 9.8.3.3 The A/E and its Consultants shall conduct all Substantial Completion inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. Representatives of authorities having jurisdiction may be present, at their sole discretion, at the Substantial Completion Inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements.

§ 9.8.3.4 If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the Owner from occupying or utilizing the Work for its intended use, the Contractor shall complete or correct such item upon notification by the A/E. The Contractor shall then submit a request for a follow-up inspection by the A/E to determine Substantial Completion.

§ 9.8.3.5 The Contractor shall proceed promptly and diligently to complete and correct items on the list of Unfinished or Defective Work. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3.6 If more than one Substantial Completion inspection is required, the Contractor shall reimburse the Owner for all costs of reinspections or, at the Owner option, the costs may be deducted from payments due to the Contractor.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion by the A/E which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion by the A/E.

§ 9.8.5 The Certificate of Substantial Completion by the A/E shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.5.1 Upon such acceptance of Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the A/E, the Owner shall make payment for such Work or portion thereof as provided in the Contract Documents. The balance payable shall include the retainage of five percent (5%) of the Contract Sum, less any retainage released under conditions of Subparagraph 9.6.2, plus an amount equal to the cost to complete or to correct, as determined by the A/E of the Uncompleted or Defective Work, plus the full amount of Liquidated Damages. The Contractor acknowledges that the Owner will suffer financial loss if the Project is not substantially completed on the date set forth in the Contract Documents. The Contractor (and its Surety) shall be liable for and the Owner may retain from payment the sums herein stipulated as for each calendar day of delay that the Work remains incomplete. The Contractor further acknowledges that the Owner has the right to elect to enforce Liquidated Damages or any other damages or legal or equitable relief as this Contract provides or as permitted by law. Retainage shall continue until Final Completion and Final Payment.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 Final Completion shall be achieved no later than thirty (30) days after Substantial Completion unless modified by a Change Order. Failure of the Contractor to achieve Final Completion within the time allowed under this Subparagraph shall entitle to Owner to consider the Contractor in substantial breach of its obligations under this Contract.

§ 9.10.1.2 The Contractor shall notify the Owner, in writing on the "Certificate of Completion by the Contractor", of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the A/E, who will attach its endorsement as to whether or not it concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date stated. The A/E's endorsement is a convenience to the Owner only and shall not relieve the Contractor of its responsibility in the matter, nor shall the A/E's endorsement be deemed to be evidence that the Work was finally complete and ready for inspection and testing. In the event that the A/E does not concur with the Contractor's statement, the A/E shall inform the Contractor of the basis for the A/E's non-concurrence. The Contractor may, at its sole option, (i) defer the inspection; or, (ii) request the inspection be performed in accordance with this Subparagraph. The final inspection and testing shall be conducted in the same manner as the inspection for

Substantial Completion, including, but not limited to, the requirements of Clauses 9.8.3.3, 9.8.3.4, 9.8.3.5 and 9.8.3.6 of this Contract.

§ 9.10.1.3 The Contractor shall then submit a request for a follow-up inspection to determine Final Completion. If more than one Final Completion inspection is required, the Contractor shall reimburse the Owner for all costs of reinspections or, at the Owner's option, the costs may be deducted from payments otherwise due to the Contractor.

§ 9.10.1.4 Approval of Work as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.
- .4 faulty or defective Work appearing after the date of Substantial Completion.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(Paragraphs deleted)

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons or serious losses to real or personal property resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.1.1 The Owner and Contractor hereby agree that this Paragraph shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction, such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the

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amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

- .1 Any adjustment in the Contract Sum, including reasonable overhead and profit, made pursuant to this Subparagraph shall be determined in accordance with Paragraph 7.5 of this Contract.
- .2 The Work in the affected area shall be resumed immediately following the occurrence of any of the following events: (a) the Owner causes remedial work to be performed that results in the absence of materials or substances; or (b) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (c) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to both the Owner and the Contractor.
- .3 For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Contract Documents. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

(Paragraphs deleted)

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7. Written notice of the emergency, including an estimate of cost and probable effect of delay on the progress of the Work, must be given by the Contractor to the A/E as soon as possible, but in no case more than ten (10) days after the start of the emergency.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

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- .1 Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:
- (1) Premises-Operations.
 - (2) Independent Contractor's Protective.
 - (3) Products and Completed Operations.
 - (4) Personal and Advertising Injury.
 - (5) Contractual, including specified provision for contractor's obligations under Paragraph 3.18.
 - (6) Broad Form Property Damage including Completed Operations.
 - (7) Owned, Non-owned and Hired Motor Vehicles.
- .2 The insurance required Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law or other provisions of this Contract:
- (1) COMMERCIAL GENERAL LIABILITY:

(a) General Aggregate (per project)	\$1,000,000
(b) Products/Completed Operations	\$1,000,000
(c) Personal and Advertising Injury	\$1,000,000
(d) Each Occurrence	\$1,000,000
(e) Fire Damage (Any one fire)	\$ 50,000
(f) Medical Expense (Any one person)	\$ 5,000
 - (2) BUSINESS AUTO LIABILITY (including all Owned, Non-owned and Hired Vehicles):

(a) Combined Single Limit	\$1,500,000
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OR

(b) Bodily Injury & Property Damage (each)	\$ 750,000
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 - (3) WORKER'S COMPENSATION:

(a) State	Statutory
(b) Employers Liability	\$100,000 Per Accident
	\$500,000 Disease, Policy Limit
	\$100,000 Disease, Each Employee

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with the Owner prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Owner as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary and that any liability insurance of the Owner shall be secondary and noncontributory.

§ 11.1.4 For informational purposes, the Contractor is advised that Work's Compensation Insurance is required for all Owners and executive officers of entities incorporated in the State of South Carolina.

§ 11.1.5 The Aggregate Limits of Insurance required by Subparagraph 11.1.2 shall apply, in total, to this Contract only. This shall be indicated on the insurance certificate or an attached policy amendment.

- .1 The insurance policies and Certificates of Insurance required by this Contract shall contain a provision that no material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Owner has been given at least thirty (30) days prior written notice. The Contractor shall provide a minimum of thirty (30) days written notice to

the Owner of any proposed reduction of coverage limits, including every coverage limit identified in Subparagraph 11.1.2, or any substitution of insurance carriers.

- .2 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under this Article or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain Builder's Risk on behalf of the Owner insuring the Work in form acceptable to the Owner in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis. Such Builder's Risk insurance shall be maintained until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is earlier.

(Paragraphs deleted)

§ 11.3.2 Property Insurance shall be written using a 'Builders Risk Coverage Form' with the following attached forms and endorsements.

- .1 Causes of Loss – Special Form; (Risks of Direct Physical Loss unless the loss is excluded or limited by the Form)
- .2 Causes of Loss – Earthquake Form; and
- .3 Flood Insurance

§ 11.3.3 Covered Property is the Building Under Construction described in the Policy Declarations and includes:

- .1 Foundations;
- .2 If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises;
 - (1) Fixtures, machinery and equipment used to service the building; and
 - (2) Building materials and supplies used for construction;
- .3 If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

§ 11.3.4 Replacement of insured damaged work shall be covered by an appropriate Change Order. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.5 The Owner and the Contractor shall take reasonable steps to obtain consent of insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.6 The Contractor shall provide adequate insurance to protect the interests of the contractor, Subcontractor, and Sub-subcontractor in the work.

§ 11.3.7 The Contractor shall be responsible for the deductible(s) in the above-stated policy. The policy shall be written with a deductible of no more than \$2500 for each occurrence.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Sum.

- .1 The Surety shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times the contract amount.
- .2 The Performance Bond and the Payment Bond shall be made payable to the Owner.
- .3 The Performance and Labor Material Payment Bonds shall:
 - (1) be issued by a surety company licensed to do business in South Carolina; and,
 - (2) be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
 - (3) remain in effect for a period of time not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer; and,
 - (4) display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond stating that:
 - (a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
 - (b) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.
 - (5) Notwithstanding the foregoing, any bonds required by this Contract shall meet the requirements of the SC Code of Laws, as amended.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.3 The Contractor shall furnish the required bonds to the Owner before execution of the Contract.

§ 11.4.4 The Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of:

- .1 notice of changes in the Work;
- .2 request for reduction or release of retention;
- .3 request for final payment; and
- .4 any other item required by the Surety.

The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 Contractor's Warranty Period. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If, prior to the date of Substantial Completion, the Contractor, or Subcontractor, or anyone for whom either is responsible, uses or damages any portion of the Work, including without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 unless otherwise provided in the Contract Documents. .

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of South Carolina.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

(Paragraph deleted)

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Unless otherwise permitted herein, all notices contemplated by the Contract Documents shall be in writing and shall be deemed duly given:

- .1 upon actual delivery to the person identified in the A101, if delivery by hand; or,
- .2 upon receipt by the transmitting party of confirmation or reply, if delivery is by facsimile, telex or telegram; or,
- .3 upon receipt by the person identified in the A101, if delivery is by deposit into the United States mail, certified mail, return receipt requested.

§ 13.3.2 Each such notice shall be sent to the respective party at the address provided in the A101, or to any other address as the respective party may designate by notice delivered pursuant hereto.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 Termination of the Contract by either party for any reason shall not relieve the parties of any obligation theretofore accorded under this Contract. Notwithstanding Subparagraph 9.10.4, and without limiting the foregoing sentence, the following provisions (as amended) of the Contract Documents shall survive termination for whatever cause, expiration or completion:

- | | |
|-------|---|
| 1.5 | Ownership and Use of Drawings, Specifications and Other Instruments of Service: |
| 3.5 | Warranty |
| 3.17 | Royalties, Patents and Copyrights |
| 3.18 | Indemnification |
| 3.10 | Waiver of Listed Damages |
| 3.11 | Waiver of Claims Against the A/E |
| 4.5 | Dispute Resolution |
| 7.5.5 | Cost of Pricing Data |
| 11.1 | Contractor's Liability Insurance |
| 11.5 | Performance and Payment Bond |
| 12.2 | Correction of Work |
| 13.1 | Governing Law |
| 13.4 | Rights and Remedies |
| 13.12 | Retention and Audit of Contractor's Records |

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner

shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing. The Contractor shall give the A/E timely notice in advance of tests, inspections or approvals.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

§ 13.6.1 Payments made under the Contract Documents are subject to the requirements of Title 29, Chapter 6 of the South Carolina Code of Laws, as amended.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or relating to the Contract within the times established by the laws of the State of South Carolina.

§ 13.8 DRUG-FREE WORKPLACE

The Contractor certifies to the Owner that the Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

§ 13.9 CANCELLATION AFTER AWARD

Pursuant to § 11-35-1520 of the SC Code of Laws, as amended, and South Carolina Regulation 19-445.2085, this Contract may be cancelled after award, but prior to issuance of the Notice to Proceed. In such event, the Contractor shall recover, as its sole remedy, its reasonable bid preparation costs.

§ 13.10 BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Owner. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of State or governmental contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

§ 13.11 RETENTION AND AUDIT OF CONTRACTOR'S RECORDS

The Contractor and all subcontractors shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended. Accordingly, the Owner shall be entitled, at reasonable times and places, to audit the books and records of both the Contractor and any subcontractor who has submitted cost or pricing data pursuant to either this Contract or to §11-35-1830 to the extent that such books and records relate to such cost or pricing data. If any cost or pricing data is required for this Contract or any Modification, the Contractor and any subcontractor shall maintain

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such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the Contract; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Owner. If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Owner shall be entitled to audit the books and records of the Contractor and any subcontractor to the extent that such books and records relate to the performance of the Contract or any Modification.

Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime contract and by any subcontractor for a period of three years from the date of final payment under the subcontract.

§ 13.12 UNIT PRICE WORK

§ 13.12.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the initial Contract Sum will be deemed to include an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as identified in the Contract. The estimated quantity for each item of Work represent the Owner's best estimate of the amount of each item to be required of the Contractor, but the amounts are not guaranteed, and are solely for the purpose of comparison of Bids and determining an initial Contract Sum. Determinations of the actual quantities, and classifications of Unit Price Work performed by the Contractor will be made by the A/E as described below.

§ 13.12.2 Subject to an adjustment pursuant to Subparagraph 4.3.9, each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's total costs, including overhead and profit, for each separately identified item.

§ 13.12.3 The A/E will determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The A/E will review with the Contractor its preliminary determinations on such matters before rendering a written decision or issuing a recommendation on the Contractor's Applications for Payment. The A/E's written decisions or recommendations will be final and binding on the Owner and the Contractor, except as modified by the A/E to reflect changed factual conditions or more accurate data, and subject to Paragraph 4.4. For purposes of Paragraph 4.4, the A/E's written decisions or recommendations shall serve as the A/E's initial decision.

§ 13.13 PROCUREMENT OF MATERIALS BY OWNER

§ 13.13 .1 The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such pre-purchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

(Paragraphs deleted)

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work

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executed. Any adjustment to Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

(Paragraphs deleted)

§ 14.2.1 The Owner may terminate the Contract, or any separable part of it, if the Contractor:

- .1 fails to complete Work within the time specified in the Contract Documents, including any authorized adjustments; or;
- .2 fails to prosecute the Work, or any separable part of the Work, with diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments; or,
- .3 fails to make payments to Subcontractors for materials or labor in accordance with Title 29, Chapter 6 of the South Carolina Code of Laws, as amended, and the respective agreements between the Contractor and the Subcontractors; or
- .4 persistently disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction; or,
- .5 fails to proceed as required by Subparagraph 4.3.3 pending final resolution of a Claim; or,
- .6 fails to comply with any of the other material provisions of this Contract.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the A/E, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

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§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall complete the performance of the Work not terminated, if any:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- .4 complete the performance of the Work not terminated, if any.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed. Any adjustment to the Contract Sum made pursuant to this Subparagraph shall be made in accordance with the requirements of Paragraph 7.5.

(Paragraphs deleted)

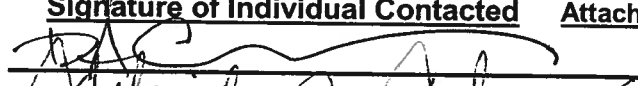
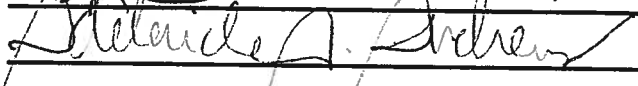

CPR COMMITTEE and/or COUNCIL AGENDA

8

TO: Joseph P. Riley, Jr., Mayor
FROM: Ross Eastwood / Michael Compton DEPT. Parks – Capital Projects
SUBJECT: SPRING & CANNON STREETSCAPE, TWO-WAY CONVERSION, AND SIGNALIZATION PROFESSIONAL SERVICES FEE AMENDMENT #8
REQUEST: The approval of a Professional Services Contract and Fee Amendment #8 with Kenneth B. Simmons Associates, in the amount of \$209,371.83, for construction administration services for the Spring & Cannon Streetscape, Two-way street conversion, and new Signalization project.

COMMITTEE OF COUNCIL: Ways & Means DATE: September 23, 2014

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Capital Project Director	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
CPR Committee Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept/Div Parks /Capital Projects Acct # 050550-58238

Balance in Account \$4,902,007.57 Amount needed for this item \$209,371.83

NEED: Identify any critical time constraint(s).

CFO's Signature: 

FISCAL IMPACT: Approval of the fee amendment will increase the existing contract with Kenneth B. Simmons Associates by \$209,371.83, from \$611,811.00 to \$821,182.83. The funding source for this project is Gateway TIF {\$5,852,127.13}.

Mayor's Signature: 
Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00 A.M ON THE DAY OF THE CLERK'S AGENDA MEETING.

**Spring and Cannon Streetscape
(050550)**

CP0107		Draft Project Budget	Expenses to Date	Encumbrances	Remaining Budget	Notes
DESIGN / ENGINEERING						
Division/Object						
050550-58238	Design, Engineering and Survey	\$ 265,000.00				KB Simmons Associates
050550-58238	Fee Amendment 1	\$14,674.00				KB Simmons Associates
050550-58238	Fee Amendment 2	\$59,900.00				KB Simmons Associates
050550-58238	Fee Amendment 3	\$4,150.00				KB Simmons Associates
050550-58238	Fee Amendment 4	\$22,744.00				KB Simmons Associates
050550-58238	Fee Amendment 5	(\$20,500.00)				KB Simmons Associates
050550-58238	Fee Amendment 6	\$228,130.50				KB Simmons Associates
050550-58238	Fee Amendment 7	\$37,712.50				KB Simmons Associates
050550-58238	Fee Amendment #8	\$ 209,371.83				KB Simmons Associates
	Subtotal Design Services Contract	\$ 821,182.83	\$ 608,651.03	\$ 212,531.80	\$ -	
050550-58238	Surveying	\$ 15,620.00	\$ 10,267.40	\$ 5,352.60	\$ -	Davis & Floyd for KB Simmons
050550-58238	2-way Conversion Design Exception	\$ 15,481.60	\$ 15,481.60	\$ -	\$ -	Davis & Floyd - P112256
050550-58238	Road Paving Surveys	\$ 29,660.00	\$ 16,430.99	\$ 13,229.01	\$ -	Davis & Floyd - P125780
050550-58238	Materials Testing	\$ 15,000.00	\$ -	\$ -	\$ 15,000.00	
050550-58238	Additional Construction Administration	\$ 50,000.00	\$ -	\$ -	\$ 50,000.00	
050550-58238	Storage Container Rental for Light Poles	\$ 1,531.00	\$ 1,030.80	\$ 500.20	\$ -	P-Card Purchase with Dixie Temporary Storage
050550-58236	Advertising	\$ 944.13	\$ 944.13	\$ -	\$ -	\$90 PO is with The Chronicle & \$854.13 is P&C
050550-58016	Printing expenses	\$ 500.00	\$ 189.20	\$ 310.80	\$ -	P-card purchase for A&E Printing
050550-52000	Office Expenses	\$ 200.00	\$ 74.01	\$ 125.99	\$ -	P-card purchase
	TOTAL D/E COSTS	\$ 950,119.56	\$ 653,069.16	\$ 232,050.40	\$ 65,000.00	
CONSTRUCTION						
050550-58240	Streetscape, Two-way Conversion and Signalization Construction	\$ 4,193,007.57	\$ -	\$ 4,193,007.57	\$ -	AOS Specialty Contractors; Contract includes Base Bid and Bid Alternates 1 & 2)
	TOTAL CONSTRUCTION COSTS	\$ 4,193,007.57	\$ -	\$ 4,193,007.57	\$ -	
050550-52940	Contingency	\$ 709,000.00	\$ -	\$ -	\$ 709,000.00	12 percent contingency
	TOTAL PROJECT COSTS	\$ 5,852,127.13	\$ 653,069.16	\$ 4,425,057.97	\$ 774,000.00	
FUNDING						
<u>YEAR</u>	<u>SOURCE</u>	<u>AMOUNT</u>				
	Gateway TIF	\$ 6,345,188.00				Streetscape, Signalization, & Two-way conversion
2015	Gateway TIF	\$ 700,000.00				Add'l funding to complete Streetscape phase
2014	General Fund Reserves	\$ 1,200,000.00				Funding for Two-way conversion and Signalization.
	Gateway TIF	\$ 318,144.44				
	Cost recorded in 050553-King St. Pole Lighting Division	\$ (318,144.44)				
	TOTAL FUNDING	\$ 8,245,188.00				
PROJECT SUMMARY						
	TOTAL PROJECT COST	\$ 5,852,127.13				
	TOTAL PROJECT FUNDING	\$ 8,245,188.00				
	PROJECT BALANCE	\$ (2,393,060.87)				

City of Charleston**Contract Amendment and Modification for Professional Services # CP 0107 D1**

Project: Spring/Cannon Streetscape and Two Way Traffic Conversion.

Owner: City of Charleston
Division of Capital Projects
823 Meeting Street
Charleston, SC 29403

A/E: Kenneth B. Simmons Associates, LLC
2711 Middleburg Drive, Suite 210
Columbia, SC 29204

Davis & Floyd
3229 West Montague Avenue
North Charleston, SC 29418

Contract Date: October 1999

Amendment Date: 8/22/14

To the A/E: You are hereby authorized, subject to contract provisions, to make the following changes:

1. Description of the Contract Amendment:

This Contract Amendment #8:

1. Amends the Contract dated October 14, 1999 between the City of Charleston and Kenneth B. Simmons & Associates as Consultant with Davis & Floyd as a Sub-A/E ("Original Contract") as follows:
 - a. Replaces the terms of the Original Contract in their entirety and replaces same as provided in the attached AIA Document B101-2007, which is incorporated herein by reference ("Amended Contract").
 - b. The Amended Contract names Davis & Floyd as Lead A/E with Kenneth B. Simmons & Associates as a Sub-A/E.
 - c. The Amended Contract modifies the compensation to be paid to the Consultant, Davis & Floyd, to \$209,371.83.
 - d. The Amended Contract modifies the scope to include additional Construction Administration services required due to the extensive expansion of scope from the original scope created in 1999, Submittal reviews, Responding to RFI's, Inspections, SWPPP and Close-out services.

2. Adjustments to the Contract Sum:



Original Contract Sum	\$	<u>250,000.00</u>
Change by Previously Approved Contract Amendments.....	\$	<u>361,811.00</u>
Contract Sum prior to this Contract Amendment.....	\$	<u>611,811.00</u>
Amount of this contract Amendment, complete.....	\$	<u>209,371.83</u>
New Contract Sum, Not including previous Amendments for KBSA....	\$	<u>209,371.83</u>

3. Adjustments in Contract Time:

New Date for Contract Completion..... 10/31/15

City of Charleston

Contract Amendment and Modification for Professional Services # CP 0107 D1

LANDSCAPE ARCHITECT:	 <u>KENNETH B. SIMMONS, JR.</u>	<u>7/4/14</u>
	(A/E's Name)	(Date)
ARCHITECT/ENGINEER:	 <u>MICHAEL V. HORTON</u>	<u>9/9/14</u>
	(A/E's Name)	(Date)
OWNER:	<u>Joseph P. Riley, Jr., Mayor</u>	<u></u>
		(Date)

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year

BETWEEN the Architect's client identified as the Owner:

City of Charleston
Department of Parks
Capital Projects Division
823 Meeting Street
Charleston, SC 29403
Phone: 843-724-7324
Fax: 843-724-7300

and the Architect:

Davis & Floyd, Inc.
3229 West Montague Avenue
North Charleston, SC 29418

for the following Project:

(Paragraphs deleted) CP0107 Spring/Cannon Streetscape and Two Way Traffic Conversion

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(1512789313)

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

This Contract supersedes the Contract for Design and Engineering Services (dated 10/14/1999) for the Project. Owner's budget for the Cost of the Work as defined in section 6.1 of this Agreement is \$ 4,193,007.57.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:
October 2014

.2 Substantial Completion date:
October 2015

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in accordance with the terms of this Agreement.

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(1512789313)

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

2.3.1 The A/E shall define the Project organization as required in Paragraph 12.2.

2.3.2 The consultants presented by the A/E as part of the selection process and approved by the Owner shall be the consultants used for the Project and shall be listed by name and discipline in Paragraph 12.2. The A/E shall not substitute any consultant without the prior written consent of the Owner.

2.3.3 Key personnel shall be listed as required in Paragraph 12.3. The A/E shall not substitute any Key Personnel without the prior written consent of the Owner.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

(Paragraphs deleted)

§ 2.5 The A/E may vary periodic visits to the work, but shall average not less than one visit per week during the course of construction or as otherwise agreed by the Owner and A/E in Article 13.

§ 2.6 The A/E shall submit to the Owner, at least once a month, a written report of its and its consultants' periodic visits to the Project, its findings and the status of the Project or as otherwise agreed by the Owner and the A/E in Article 13.

§ 2.7 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the A/E about matters arising out of or relating to the Contract Documents. Communications by and with the A/E's consultants shall be through the A/E.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those services described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services. For the purposes of this Agreement "usual and customary" shall be those services reasonably required to provide complete design and the construction period.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The A/E shall if required provide the local Building Official a complete set of Construction Documents to review, meet with the local official, and determine if inspection services are available.

(Paragraph deleted)

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§3.1.6 The A/E shall if required meet with the local Fire Official to review proposed fire protection systems, and provide the local Fire Official with a set of Construction Documents. The A/E shall notify the local Fire Official of the time and place the fire protection and detection system(s) are to be tested.

§3.1.7 The A/E shall if required provide the Owner a letter of approval of fire protection systems shop drawings from the Fire Marshal.

§3.1.8 The A/E's mechanical engineer of record shall if required attend the testing of the fire protection and detection system(s) and provide the Owner with the following:

- (1) The installer's Certificate of Compliance with code requirements for installation and testing.
- (2) The Fire Marshal's Inspection Report.
- (3) The Record of Training of users for Systems Operation.

§3.1.9 The A/E shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Owner to maintain a comprehensive record of the Project. The Owner's Project number and Name shall be shown on all documents

§ 3.1.10 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.11 For Construction Change Directives only, when the Contractor does not provide properly itemized cost information in accordance with Article 7 of the A201, the A/E shall, for the Owner's information and as an initial basis for establishing the upper limit of compensation to the Contractor, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The A/E's effort required to prepare the cost itemization shall be considered as an Additional Service only if the Directive is not a result of a design error or omission.

§ 3.1.12 When the A/E deems it necessary, it is only authorized to direct minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 3.1.13 The A/E and its Consultants shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES – N/A (Completed under a previous, separate Agreement)

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

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§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.2.8 The A/E shall submit to the Owner a preliminary Estimate of Construction Cost based on current area, volume or other unit costs.

§ 3.2.9 The A/E shall submit to the Owner for review and approval four (4) properly completed sets of Schematic Design Documents, and the Estimate of Construction Cost in the number and form requested by the Owner.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES – N/A (Completed under a previous, separate Agreement)

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. Design Development Documents shall incorporate the accepted resolution of all Owner comments on the Schematic Design Document submittal.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.3.4 The A/E shall submit to the Owner for review and approval six (6) sets of properly completed Design Development Documents and the Revised Estimate of Construction Cost, in the number and form requested by the Owner. The A/E shall not proceed to the Construction Documents Phase until written approval is submitted by the Owner.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES – N/A (Completed under a previous, separate Agreement)

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor

shall provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES – N/A (Completed under a previous separate agreement)

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors, if directed by the Owner. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING – N/A (Completed under a previous separate agreement)

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below, Fee Amendment No.8 with attached fee summary and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities not under the control of the A/E performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

(Paragraph deleted)

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction

means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract

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Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. The A/E shall provide one Substantial Completion Inspection, and one Final Completion Inspection. Where projects have been designed for phased completion, the A/E shall provide a Substantial Completion Inspection and Final Completion Inspection for each phase of the Project. If additional inspections are required, payment to the A/E shall be in accordance with Paragraph 11.2 and charged to the Contractor.

§ 3.6.6.4 The A/E shall prepare, from Contractor supplied-information, and provide to the Owner a set of reproducible Record Plans showing all significant changes in the Work made during construction. Plans shall be stamped as "Record Plans". This set of reproducible documents shall be in addition to computer media plans (diskettes, tapes, etc.) that may be required in Paragraph 12.5.

§ 3.6.6.5 The A/E shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The A/E's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Unless otherwise agreed upon by the parties, the A/E's decisions on all requests shall be rendered within fourteen (14) days of receipt by the A/E.

§ 3.6.6.6 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.7 The A/E shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the A/E's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. The A/E's initial decisions on all claims, disputes or other matters in question, between the Owner and Contractor shall be rendered within fourteen (14) days of receipt by the A/E, unless otherwise agreed to by the Owner.

§ 3.6.6.8 **WARRANTY INSPECTION.** As part of the Basic Services provided by the A/E, during the tenth (10th) month after the Date(s) of Substantial Completion, the A/E shall visit the Project to review the Work and shall prepare a report to be issued to the Owner, and at the Owner's direction, to the Contractor, indicating outstanding work to be corrected and warranty issues to be addressed by the Contractor. The A/E shall, as an Additional Service, assist the Owner in taking necessary action to see that the deficiencies are corrected.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project by the Owner. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Not provided	
§ 4.1.2 Multiple preliminary designs	Not provided	
§ 4.1.3 Measured drawings	Not provided	
§ 4.1.4 Existing facilities surveys	Not provided	

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§ 4.1.5	Site Evaluation and Planning (B203™–2007)	Not provided	
§ 4.1.6	Building information modeling	Not provided	
§ 4.1.7	Civil engineering	Architect	Provided under previous contract
§ 4.1.8	Landscape design	Architect	Provided under previous contract
§ 4.1.9	Architectural Interior Design (B252™–2007)	Not provided	
§ 4.1.10	Value Analysis (B204™–2007)	Not provided	
§ 4.1.11	Detailed cost estimating		Provided under previous contract
§ 4.1.12	On-site project representation	Not provided	
§ 4.1.13	Conformed construction documents	Not provided	
§ 4.1.14	As-Designed Record drawings	Not provided	
§ 4.1.15	As-Constructed Record drawings	Not provided	
§ 4.1.16	Post occupancy evaluation	Not provided	
§ 4.1.17	Facility Support Services (B210™–2007)	Not provided	
§ 4.1.18	Tenant-related services	Not provided	
§ 4.1.19	Coordination of Owner's consultants	Not provided	
§ 4.1.20	Telecommunications/data design	Not provided	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	Not provided	
§ 4.1.22	Commissioning (B211™–2007)	Not provided	
§ 4.1.23	Extensive environmentally responsible design	Not provided	
§ 4.1.24	LEED® Certification (B214™–2007)	Not provided	
§ 4.1.25	Fast-track design services	Not provided	
§ 4.1.26	Historic Preservation (B205™–2007)	Not provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	Not provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

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§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization to provide:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid requests proposed by the Owner unless required pursuant to the Contract Documents;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing not already covered under Basic Services.

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- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Extensive evaluation of the qualifications of bidders;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect or the Owner.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need therefor. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 Except as other provided herein, to the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services as per Fee Amendment No.8 with attached fee summary. Services exceeding the limits set forth below as Additional Services. When the limits are reached, the Architect shall notify the Owner:
(Paragraphs deleted)

§ 4.3.4 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;

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adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

(Paragraph deleted)

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project and approved by the Owner. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials except as provided in Fee Summary.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

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§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 6.4 If the Bidding has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market if necessary.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction or future modification for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, said agreement of the Architect not to be unreasonably withheld. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 DISPUTE RESOLUTION

§ 8.1 GENERAL

§ 8.1.1 The parties agree to attempt in good faith to resolve their disputes arising from a claim or controversy arising out of or relating to this Agreement. To the extent that the parties are unable to resolve a claim or controversy arising out of or relating to this Agreement, the parties agree that any suit, action or proceeding arising out of or relating to this Agreement shall be instituted and maintained only in state court, at the election of the Owner, located in the County in which the Owner maintains its principal place of business, in the State of South Carolina. The A/E agrees that any act by the Owner regarding this Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase "the State" includes any governmental entity transacting business with the A/E pursuant to this Agreement.

(Paragraphs deleted)

§ 8.2 CLAIMS FOR LISTED DAMAGES

§ 8.2.1 **Waiver of Claims Between A/E and Owner.** Notwithstanding any other provision of the Agreement, but subject to a duty of good faith and fair dealing, the A/E and the Owner waive Listed Damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Listed Damages are damages incurred for principal office expenses and overhead (including, but not limited to, the compensation of personnel stationed there, rent, utilities, and office equipment), for losses of financing, business and reputation, for loss of profit and for attorney's fees unless such attorney's fees are necessitated by the act(s) of the breaching party and incurred by the non-breaching party, and interest (excluding post-judgment).

(Paragraphs deleted)

§ 8.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The A/E and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the A/E in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the A/E's option, cause for suspension of performance of services under this Agreement. If the A/E elects to suspend services, prior to suspension of services, the A/E shall give written notice to the Owner. Unless payment in full or undisputed amounts are received by the A/E within twenty-one (21) days of the date of receipt by the Owner of the written notice, the suspension shall take effect without further notice. In the event of a suspension of services, the A/E shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services. Before resuming services, following a suspension for reasons of nonpayment, the A/E shall be paid all undisputed sums due prior to suspension and any direct expenses incurred in the interruption and resumption of the A/E's services. The A/E's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Project is suspended by the Owner for any reason for more than thirty (30) consecutive days the A/E shall be compensated for acceptable services performed prior to the notice of such suspension.

§ 9.2.1 If the Project is resumed after an interruption of more than thirty (30) but less than one hundred eighty (180) days, the A/E's time schedules shall be equitably adjusted.

§ 9.2.2 If the Project is resumed after an interruption of one hundred eighty (180) days or more, the A/E's compensation shall be equitably adjusted to provide for expenses incurred in resuming the A/E's services. The A/E's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Project is suspended or the A/E's services are suspended for more than one hundred eighty (180) consecutive days, the A/E may terminate this Agreement by giving not less than seven days' written notice to the Owner.

§ 9.3.1 This Agreement may be terminated by the Owner with not less than seven (7) day's written notice to the A/E that the Project is permanently abandoned at which time the Owner shall compensate the A/E for Work completed at the time of termination. The A/E shall not be entitled to termination damages.

§ 9.4 This Agreement may be terminated by either party upon not less than twenty one (21) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. The Notice of Termination shall give the other party a stated period of time within which to remedy its breach of contract, provided such time allowed for remedy shall be no less than thirty (30) days and no more than sixty (60) days from the receipt of the notice of termination. This notice shall specify the initiating party's reason(s) for the termination and shall state with specificity the means by which the other party may cure the asserted grievance.

§ 9.4.1 If termination is the fault of the A/E, no additional compensation shall be due to the A/E.

§ 9.5 This Agreement may be terminated by the Owner upon not less than twenty one (21) days' written notice to the A/E for the Owner's convenience and without cause.

§ 9.6 Payment for contract termination not the fault of the A/E shall be made in proportion to acceptable services performed prior to the notice of termination. In addition, the A/E shall be compensated for all Reimbursable Expenses incurred by the A/E prior to the notice of termination in accordance with Paragraph 11.3.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of South Carolina.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run pursuant to the laws of South Carolina. See § 11.35.4230 of the SC Code of Laws, 1976 as amended.

§ 10.4 The Owner and A/E, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all terms and covenants of this Agreement. Neither the Owner nor the A/E shall assign this Agreement without the written consent of the other party, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The A/E shall execute all consents reasonably required to facilitate such assignment.

§ 10.5 This Agreement represents the entire and integrated agreement between the Owner and the A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall be amended only by written instrument signed by both Owner and A/E.

§ 10.6 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or A/E.

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§ 10.7 Unless otherwise provided in this Agreement, the A/E and A/E's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site unless such discovery, presence, handling, removal or disposal thereof is the result of an error or omission of the A/E.

§ 10.8 The A/E shall have the right to include photographic or artistic representations of the design of the Project among the A/E's promotional and professional materials. The A/E shall be given reasonable access to the completed Project to make such representations. However, the A/E's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the A/E in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the A/E in the Owner's promotional materials for the Project.

§ 10.9 If the Owner requests the A/E to execute certificates, the proposed language of such certificates shall be submitted to the A/E for review at least 14 days prior to the requested dates of execution. The A/E shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.10 Any changes to the scope of work set forth in Article 13 or Article 14 shall be requested on the City of Charleston "Professional Services Contract Amendment Request" form.

§ 10.11 All documents, transmittals, products and plans shall be identified with the Owner's name and the City's project name and number.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Stipulated sum of Two hundred nine thousand three hundred seventy one dollars and Eighty Three Cents (\$209,371.83)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

Per the attached Exhibit A Hourly Rates

§ 11.3

(Paragraphs deleted)

Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 10% (ten percent), or as otherwise stated below:

§ 11.4 Where compensation for Basic Services is based on a stipulated sum, the compensation for each phase of services shall be as follows:

Schematic Design Phase	NIC
Design Development Phase	NIC
Construction Documents Phase	NIC
Bidding or Negotiation Phase	NIC
Construction Administration Phase	
	\$209,371.83
Total Basic Compensation	\$209,371.83

§ 11.5 The responsibility for the costs of errors and omissions in the Contract Documents, for which the A/E is responsible or has been found liable that result in Change Orders to the Construction Contract shall be determined as follows.

- .1 The A/E shall correct errors and omissions in the Contract Documents without being paid additional fees and at no cost to the Owner.

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- .2 When a Change Order is due to an error or omission by the A/E, all costs over those costs which the Owner would have paid without the error or omission having occurred shall be paid by the A/E.
- .3 Each error or omission shall constitute a separate event for the purpose of determining costs.

(Table deleted)

§ 11.6 No deductions shall be made from the A/E's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work, other than those for which the Owner has reasonable cause to determine A/E to be liable, provided that due notice to the A/E has been given pursuant to Article 3.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

Per the attached Exhibit A Hourly Billing Rate for Additional Services only.

(Table deleted)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence not to exceed current GSA rates;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project and/or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; and
- .9 All taxes, excluding income taxes, levied on professional services and on reimbursable

(Paragraphs deleted)
expense

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 10% (ten percent) of the expenses incurred. Reimbursable Expenses shall not exceed Eighteen thousand two hundred ninety three dollars and eighty seven cents (\$18,293.87) without prior written approval of the Owner.

§ 11.9

(Paragraphs deleted)

PAYMENTS FOR BASIC SERVICES

§ 11.9.1 Payments for Basic Services shall be made in proportion to services performed within each phase of service as established in Subparagraph 11.4.

§ 11.9.2 Unless otherwise agreed by the parties, payments for services shall be made monthly in proportion to services performed. Payments are due and payable 30 days after receipt and approval of the Architect's invoice by the Owner.

(Paragraph deleted)

§ 11.9.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or is responsible or has been found liable for the amounts in accordance with Section 8.1 herein..

(Paragraph deleted)

§ 11.9.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

Init.

(Paragraphs deleted)

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Paragraph deleted)

§ 12.1 Contract Schedule and Time Limitations:

Attached Fee Amendment No. with attached Fee Summary.

(Paragraph deleted)

§ 12.2 List of Consultants by Discipline and Name of Person or Firm:

Mike Horton, PE, Vice President, Davis and Floyd, Inc.

Kenneth B. Simmons, Jr., FASLA Kenneth B. Simmons Associates, LLC. Sub A/E

(Paragraphs deleted)

§ 12.3 List the key Project Team Members assigned to this Project by name, Discipline and Name of Person or Firm.

Michael Richardson, Inspector, Davis & Floyd, Inc.

Mike Simpson, Jr., Construction Services Manager, Davis and Floyd, Inc.

§ 12.4 Additional Record Plans Requirements.

§ 12.5 GENERAL INSURANCE. The A/E shall maintain all forms of insurance required by law in the State of South Carolina. The A/E shall also maintain insurance coverage for comprehensive general liability, automobile liability and workers' compensation by a carrier satisfactory to the Owner, which carrier shall be licensed to provide such coverage in the State of South Carolina, in the forms and amounts listed in Article 11 of the General Conditions, satisfactory to the Owner and names the Owner as an additional insured. The A/E shall ensure that all consultants engaged or employed by the A/E and/or a Joint-Venture Associate, if any, carry and maintain equivalent insurance naming the Owner as an additional insured on all such policies. The A/E and his consultants shall submit proof of such insurance to the Owner at the time of Contract Award and at any time when a material change in coverage, carriers, or underwriters occurs. The maintenance in full current force and effect of such coverage shall be a condition precedent to the Owner's obligation to pay any amounts due to the A/E under this Agreement and if not maintained by the A/E, its consultants and Joint-Venture Associate, if any, shall be grounds for termination for cause by the Owner. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, non renewal, or material modification of the policies.

§ 12.5.1 PROFESSIONAL LIABILITY INSURANCE. In addition to other insurance required by statute or Section 12.7 of this Agreement, the A/E and each Consultant and/or Joint-Venture Associate, if any shall provide professional liability Insurance, issued by an insurance carrier approved in advance by the Owner and licensed to provide such coverage in the State of South Carolina, to compensate the Owner for all negligent acts, errors and omissions by the A/E, his firm, his agents, his employees, his Consultants and Joint-Venture Associate, if any, arising out of this Agreement. The A/E and his Consultants and Joint-Venture Associates shall submit proof of such insurance, which shall provide a coverage amount not less than one million dollars (\$1,000,000) per entity per claim and in the aggregate, or such other amounts as the Owner may request in accordance with clause 10.2.1.6 and approve in Subparagraph 11.3.3. Proof of Professional Liability Insurance must be submitted to the Owner in writing before a Notice to Proceed to the A/E shall be issued.

§ 12.5.2 Upon execution of this Agreement, and at every date for renewal of the policies required pursuant to Sections 12.5 and 12.5.1 herein, the A/E shall cause a Certificate of Insurance to be issued by an insurance agent licensed in the State of South Carolina and approved by the Owner. Provision of a valid Certificate of Insurance that meets the requirements of this Agreement is a condition precedent to the payment of any amounts due to the A/E by the Owner and if not maintained by the A/E, its consultants and Joint-Venture Associate, if any, shall be grounds for termination for cause by the Owner. These policies shall remain in effect for the benefit of the Owner at least through any warranty period covering the Project but in no case for less than twelve (12) months after the date of issuance of the final Certificate for Payment by the A/E. The policies shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, non-renewal, or reduction in the limits of the policy.

§ 12.6 List attachments to this Agreement not previously referenced, if any.

None.

Init.

§ 12.7 DEFINITIONS

§ 12.7.1 **ARCHITECT/ENGINEER OR ARCHITECT.** A person or firm who performs professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as defined by the SC Code of Laws, as amended, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

- .1 Wherever the word "A/E" or "Architect" appears in this Agreement between the Owner and the A/E herein, the intent is the Architect/Engineer or other design professional with whom the Owner has a contractual agreement.
- .2 The architectural, civil, structural, mechanical, electrical and other engineering portions of the Project shall be planned and designed by or under the immediate supervision of a South Carolina licensed architect(s) or engineer(s) who has or have the requisite expertise in the particular discipline involved.

§ 12.7.2 **CONSULTANT.** A person or firm contracted by or in partnership with the A/E at any tier to fulfill the terms and conditions of this Agreement.

§ 12.7.3 **CONSTRUCTION CONTRACT AWARD.** The amount of fees for services set forth in the contract between the Owner and the Contractor for this Project.

§ 12.7.4 **ESTIMATE OF CONSTRUCTION COST.** The Estimate of Construction Cost is the estimated Construction Contract Award amount for all elements of the Project designed or specified by the A/E, adjusted to reflect local conditions at the time of bidding and the anticipated period of construction.

§ 12.7.5 **CONSTRUCTION BUDGET.** The current Construction Cost plus that portion of the Owner's total project contingency reserved for the construction of the Project.

§ 12.7.6 **OWNER.** Wherever the word "Owner" appears in the B151 or herein, the intent is the City of Charleston with whom the A/E has a contractual agreement.

§ 12.7.7 **GENERAL CONDITIONS.** The AIA document A201-2007 "General Conditions of the Construction Contract" and the "Standard Supplemental Conditions" as published by the City of Charleston for use on specific projects.

§ 12.8 CERTIFICATION

The undersigned certifies that the A/E listed below shall provide a "Drug-Free Workplace" as that term is defined in § 44-107-30 of the SC Code of Laws by complying with the requirements set forth in Title 44, chapter 107; and the A/E agrees to this **Article 12, Other Conditions or Services**, as published by the Owner. Any exceptions or changes approved by the Owner shall be fully delineated in an Article 13 and attached hereto.

This Agreement is entered into as of the day and year first written above.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
Fee Amendment No.8 with attached Fee Summary and City Modified AIA Document A201-2007 General Conditions of the Contract for Construction

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

City of Charleston

Joseph P. Riley, Jr., Mayor

(Printed name and title)

(Signature)

Mike V. Horton, Vice President

(Printed name and title)

PROJECT: CP0107 Spring/Cannon Streetscape and Two Way Traffic Conversion

Init.

AIA Document B101™ – 2007 (formerly B151™ – 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 13:09:18 on 09/04/2014 under Order No.2817984345_1 which expires on 07/18/2015, and is not for resale.

User Notes:

(1512789313)

DAVIS & FLOYD

August 28, 2014

Ross Eastwood
City of Charleston – Capital Projects
823 Meeting Street
Charleston, SC 29403

Re: Professional Services Proposal
Construction Engineering & Inspection (CEI)
Spring / Cannon Streetscape
Charleston, SC

Dear Mr. Eastwood:

Davis & Floyd, Inc. (D&F) is pleased to present a proposal for providing the referenced services. Having supported the project survey, design, permitting, and bidding phases lead by Kenneth B. Simmons and Associates, we are familiar with the work to be performed during construction of the project. In response to your request for providing part-time construction management and field inspection services, we are prepared to offer the qualified and experienced staff necessary for seeing the project completed in accordance with the project design and specifications, and in compliance with the NPDES and SCDOT Encroachment Permits.

As requested, we have prepared a Fee Estimate based upon the twelve month construction schedule provided by the Contractor (AOS) and the average weekly and monthly effort requested by the City. Detailed in the attached Fee Analysis, you'll find tasks and allotted effort for the various phases of the project. Also attached is our Personnel and Reimbursable Expense Schedules. We are offering these services based upon time and expenses with fee not-to-exceed \$209,371.83.

We are prepared to start immediately upon your authorization and an executed Agreement. Please feel free to call should you have any questions or require additional information. We look forward to working with you in this capacity and seeing this next critical phase of the project completed.

Very truly yours,

DAVIS & FLOYD, INC.



Michael V. Horton, PE, CFM
Vice President

Enclosures

Fee Analysis
Personnel and Reimbursable Expense Schedule

c: Michael Simpson, PE Davis & Floyd, Inc.

Engineering | Architecture | Environmental | Laboratory

3229 West Montague Avenue North Charleston, SC 29418 [843] 554 8602

davisfloyd.com

Fee Summary

Construction Engineering & Inspection Spring / Cannon Corridor Streetscape City of Charleston

<u>Labor</u>	\$145,340.00
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Expenses

Miscellaneous	\$10,750.00
Mileage	\$2,737.80
KBSA	
Labor	\$45,738.00
Expenses	
Miscellaneous	\$803.00
Mileage	\$4,003.03
	<hr/>

Total Estimated (NTE) Fee	\$209,371.83
----------------------------------	---------------------

KBSA Labor & Expenses

Labor

Respond to RFIs	60 Hours
Site Visits (2/mo at 8 hrs/ea)	192 Hours
Total	252 Hours
Rate	\$165.00

Total Labor \$41,580.00

Expenses

Mileage (24 trips @ 257 miles/ea)	6,168 miles
Rate	\$0.59

Mileage Cost \$3,639.12

Miscellaneous Out-of-Pocket \$730.00

Total Expenses \$4,369.12

COMMITTEE / COUNCIL AGENDA

9

TO: **Joseph P. Riley, Jr., Mayor**
FROM: **J. Frank Newham** DEPT. **Public Service**
SUBJECT: **STORM DRAIN CLEANING & INSPECTION – INDEFINITE DELIVERY CONTRACT**
REQUEST: **Approval of IPR Southeast, LLC's proposal to perform various storm drain cleaning & inspection services per their response to a RFQ for these services. Contract is for two years with option of two one-year extensions.**

COMMITTEE OF COUNCIL: **Ways & Means** DATE: **September 23, 2014**

COORDINATION: This request has been coordinated with: *(attach all recommendations/reviews)*

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Dir. Dept. of Public Serv.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept./Div: **050345** Account #: **52425**

Balance in Account **\$600,000** Amount needed for this item **\$600,000**

NEED: Identify any critical time constraint(s).

CFO's Signature: *[Signature]*

FISCAL IMPACT:

Mayor's Signature: *[Signature]*

Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.



City of Charleston

South Carolina

Department of Public Service

JOSEPH P. RILEY, JR.
Mayor

LAURA S. CABINESS, P.E.
Director

MEMORANDUM

August 28, 2014

To: Laura S. Cabiness, P.E.

From: J. Frank Newham

RE: Indefinite Delivery contract - Storm Drain Cleaning and Inspection Services

The attached Indefinite Delivery Contract (IDC) is ready to send to Council for their consideration. As you know, we prequalified contractors to perform this service on an on-call basis. The intent was to have a "pool" of contractors that we could call to assist with various pipe cleaning and video services that our forces could not perform. We have selected four firms to assist in this contract period. The need to retain multiple firms is due to the immediate availability of each firm and the need (in some cases) for a rapid response.

This is a multi-year contract. Each year we budget funds for maintenance and repair. This contract allows us to spend up to \$600,000 over multiple years but the practice will be that we will only spend up to the amount actually available for repairs and that it will be distributed between the IDC contracts depending on cost and availability of the contractor to perform the work when it is needed.

Please let me know if you have any questions or need additional information.

jfn



Inland Pipe Rehabilitation

LETTER OF TRANSMITTAL

Project: **IDC Stormdrain Pipe cleaning and Inspection**

Submittal No: **0**

TO: City of Charleston

Department of Public Service

75 Calhoun Street

Charleston, SC 29401

Attn: Frank Newham

843-724-3713

REPLY ADDRESS:

Allyson Jones

5207 Brer Rabbit Road

Stone Mountain, GA 30083

404-969-3073

CO. NO.: _____

IPR JOB NO.: _____

RE: _____

Owner Project No: _____

DATE: _____

08/27/2014

WE ARE SENDING:

☐ Drawings

☐ Specifications

☐ Progress Estimate

☐ RFI

☐ Subcontract

☐ Certificate of Compliance

☐ Submittal Data

☐ Change Order

☐ EEO Report

☐ Samples

☐ Other _____

ITEM	QTY	DESCRIPTION
1	3	Executed Contracts

THESE ARE TRANSMITTED :

☐ For Approval

☐ Approved as Submitted

☐ Resubmit _____ copies

☒ For Your Use

☐ Approved as Noted

☐ Loaned Prints Returned

☒ As Requested

☐ Returned for Corrections

☐ For Bids Due _____

☐ For Review & Response

☐ Other _____

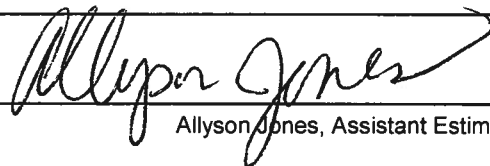
REMARKS: **Please see the enclosed information.**

COPY(S) TO: ☒ File - Cover Only

☐ _____

☐ _____

SIGNED: _____



Allyson Jones, Assistant Estimator

City of Charleston Construction Contract

THIS CONTRACT, made this _____ day of _____, 20____ by and between:

The Owner: City of Charleston and the Contractor: IPR Southeast LLC
Department of Public Service 5207 Brer Rabbit Road
75 Calhoun Street Stone Mountain, GA 30083
Charleston, SC 29401 _____

WHEREAS, the Owner requires the construction of the following project, identified as follows:
IDC - Stormwater System Cleaning & Inspection Services
(Project Name)

Whereas, the CONTRACTOR, whose South Carolina contractor's license is GXXXXX, is prepared and qualified to provide such Services;

NOW THEREFORE, the Owner and contractor agree to all of the terms and conditions set forth in this Contract.

THE EFFECTIVE DATE of this Contract shall commence as of the date written above and the term shall be for a period of two (2) calendar years with the option to extend the effective period of the contract for up to four (4) years.

THE SERVICES REQUESTED by the Owner shall be set forth in a Request for Proposal for specific construction delivery orders. The contractor agrees to accept all such requests for services issued by the Owner, unless the work requested is not within the expertise of the contractor; or as agreed by the Owner for just cause in the mutual interests of the Owner and contractor.

THE SERVICES PROVIDED by the contractor shall be set forth in a contractor's Cost Proposal which, once approved by the Owner, shall be incorporated into this Contract, and all work shall be performed by the contractor in accordance with the terms and conditions contained in this Contract.

PAYMENTS TO THE CONTRACTOR for acceptable work performed shall not exceed a total of \$600,000 with no individual Delivery Order exceeding \$200,000.

THE CONTRACT SUM payable to the contractor on account of an individual Delivery Order shall be a NOT-TO-EXCEED amount based on the costs set forth on the attached Unit Price Bid Sheet.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS CONTRACT ON THE DAY AND YEAR FIRST WRITTEN ABOVE.

OWNER: City of Charleston

CONTRACTOR: IPR Southeast LLC

BY: _____
Joseph P. Riley, Jr.
Mayor

BY: Wendy Wilkes
(Signature of Contractor Representative)

~~Joseph G. Gullio~~ Wendy Wilkes
(Name of Contractor Representative)

ITS: ~~President~~ Corporate Controller

ATTACHMENTS:

Unit Price bid sheet (2 pgs), WMBE Compliance Provisions (6 pgs)

General Conditions

ARTICLE 1 – CONTRACT DOCUMENTS

- A. The Contract Documents forming this agreement shall consist of the following:
1. a fully executed Construction Contract (this document) and any listed attachments thereto;
 2. the Contractor's Statement of Qualification date June 13, 2014
 3. the Contractor's completed Bid Form;
 4. any Delivery Order issued under this contract;
 5. all Change Orders, Change Directives, or Delivery Order amendment modifying a Delivery Order;
 6. other documents as listed in Article 16.

ARTICLE 2 - AUTHORIZATION OF SERVICES

- A. The Owner will initiate a Request for Proposal for specific services as required for the work.
- B. The Contractors Unit Price Work, which is attached to this agreement and is hereby incorporated by this reference, shall be a part of this Contract for its duration and is to be utilized in the preparation of cost proposals for all Delivery Orders to be issued.
- C. When requested by the Owner, the Contractor shall submit a Cost Proposal to provide the necessary construction services for the specific Delivery Order. The proposal shall be in the form of a "Lump Sum" or a "Not-to-Exceed" contract as requested by the Owner (See Article 5). Construction services not included in the Unit Price Work are to be listed separately.
- D. The Contractor shall include in the Cost Proposal for each Delivery Order a schedule showing the anticipated dates for completion of various milestones of the Work to be performed by the Contractor.
- E. The Owner will review the proposal in a timely manner and accept or reject it. Prior to issuing a Delivery Order, the Owner reserves the right to negotiate with the Contractor to revise the scope of work and fees that are believed to be in the best interest of the Owner.
- F. Upon acceptance of a proposal the Owner will issue a Delivery Order toward this Contract.

ARTICLE 3 – GENERAL PROVISIONS

- A. The Contractor shall not incur any expense chargeable to the Owner until a Delivery Order has been authorized and fully executed by both the Owner and the Contractor.
- B. The Contractor warrants to the Owner that:
1. it and its subcontractors (if any) are financially able to complete the work;
 2. it will perform all obligations, furnish all plant, material, equipment, tools, transportation, supplies and labor to complete the work assigned;
 3. it is authorized and licensed to do business in the State of South Carolina and the City of Charleston;
 4. it will perform the Work with care and diligence and in a professional and workmanlike manner;
 5. it will visit the work site and become reasonably apprised of the conditions in and around the work area.
- C. Contractor's Rights and Responsibilities
In addition to any other rights and responsibilities contained in this Agreement, the Contractor shall:
1. pay for required construction permits or business license fees, labor, materials, equipment, tools, transportation, supervision, testing, etc, as required for the performance of the Work in the Delivery Order;
 2. visit the work site and obtain information to assist in familiarization with the work site, its conditions and any limitations that would affect the performance of the Work in the Delivery Order;
 3. have the right to rely on information contained in the Contract Documents, but shall give prompt and timely notice to the Owner of any apparent deficiencies or inconsistencies in the information furnished by the Owner or its A/E;

4. be responsible for all construction means, methods, techniques, procedures and safety measures in the performance of the Work in the Delivery Order;
5. employ only persons skilled in the work for which it is to do, employ an experienced superintendent to supervise the work who shall be responsible for the acts or omissions of the Contractor's agents and employees or those of sub-contractors and their agents and employees acting on behalf of the Contractor;
6. have, at the time of execution and for the duration of all Delivery Orders, all professional and business insurance, licenses and permits required to provide the required Services in the State of South Carolina, the City of Charleston and as required by this Contract.

D. **Owner's Rights and Responsibilities**

In addition to any other rights and responsibilities contained in this Agreement, the Owner shall:

1. provide the contractor with available information regarding the Work and the work area for each Delivery Order;
2. secure and pay for all design permits, assessments, and easements except as required by the Contract Documents;
3. pay the Contractor for acceptable work performed, in accordance with the provisions of this Contract and it's related Delivery Order;
4. act as the A/E in the absence of a licensed design professional.

E. **A/E's Rights and Responsibilities**

In addition to any other rights and responsibilities contained in the Agreement, the A/E shall:

1. represent the Owner during the construction process through final completion of the project, and as requested during the warranty period. The A/E will act on behalf of the Owner only to the extent provided in the Contract Documents or otherwise agreed by the Owner;
2. make periodic visits to the site during construction administration to become familiar with the progress and quality of the Work and to determine if the Work is being performed in a manner indicating that the Work is generally progressing in accordance with the Contract Documents;
3. make recommendations to the Owner as to the acceptance or rejection of the Work and communicate the Owner's decision to the Contractor;
4. review and approve or reject shop drawings and samples submitted by the Contractor;
5. respond promptly to all requests for information or clarification from the Owner or the Contractor;
6. make the initial interpretation and decision on matters concerning performance under, and the requirements of, the Contract Documents, upon written request of either the Owner or Contractor. The interpretation or decision of the A/E shall be final, subject to the dispute resolution provisions of this Contract;
7. not be responsible for construction means, methods, techniques, procedures and safety measures in the performance of the work or acts of omission of the Contractor, Subcontractors or any other entity performing work on the site;
8. review periodic requests for payment, and approve or reject the request, in whole or in part;
9. prepare Change Orders or Change Directives as directed by the Owner.

ARTICLE 4 – CONSTRUCTION ADMINISTRATION

A. **Shop Drawings and Samples**

1. The Contractor shall review and approve Shop Drawings and Samples prior to their submission to the A/E. The Contractor's review shall be for compliance with the requirements of the Contract Documents and to ensure complete coordination of the Work.
2. The Contractor shall submit the number of sets as specified in the Contract Documents, or in the absence of a specification, submit enough copies for the Owner to retain two copies plus the number desired to be returned to the Contractor.
3. The A/E will review the shop drawings and samples with reasonable promptness but only for conformity with the design.
4. The Contractor shall submit samples as required by the Contract Documents. The final installed product shall match the approved sample.

B. Materials and Workmanship

1. The Contractor shall not allow the use of any asbestos-containing product.
2. The Contractor shall not use or allow the use of lead material in public water application. Lead-free solder, flux and pipe must be used in all public drinking water and wastewater applications. Lead-free solder and flux is defined as containing less than 0.2% lead while valves, pipes and appurtenances must contain less than 8.0% lead.
3. The Contractor warrants that unless otherwise specified or permitted by the Contract Documents, all material shall be new, in first class condition, and installed using workmanship of the highest quality in accordance with the Contract Documents.

C. Inspection and Testing of Materials

1. The Contractor shall have performed and documented all inspections and tests required by the Contract Documents, including those required by building officials.
2. The Contractor shall leave uncovered all areas of work that are called out in the Contract Documents to be left uncovered, or the A/E requests to be left uncovered prior to being inspected. The Contractor shall give adequate notice to the A/E of the time requested for an inspection of these areas.

D. Substitutions

1. Wherever the Contract Documents specify a particular product, article, appliance, equipment, or material and it is designated by manufacturer and model number, it is the intent to designate a level of quality, finish, appearance, function, or other factor that was desirable to have incorporated into the design. Equivalent products of alternate manufacturers may be used, but must meet or exceed the specification for the original product and must be approved by the A/E.
2. The Contractor shall not substitute any product, article, appliance, equipment, or material that is specified without prior written approval from the A/E, which shall be granted only with the concurrence of the Owner.

E. Changes in the Work

1. Only the Owner may authorize changes in the scope of the Delivery Order. Such changes shall be made by issuing either a Change Order or a Construction Change Directive, and the Contractor shall execute the changed work promptly.
2. The Contractor shall provide supporting information as requested by the A/E or the Owner to document the cost of any changed work.
3. In the absence of a total agreement concerning the item(s) for a Change Order, a Construction Change Directive shall be issued and the Contractor shall proceed diligently with performance of the work required.

F. Receiving and Storing Materials and Equipment

1. The Contractor shall have an authorized person or persons to receive all items and shall properly unload, check for completeness of shipments, and in-transit damage.
2. The Contractor shall properly handle and store materials, supplies, equipment etc. in accordance with the Delivery Order or manufacturer's printed instructions of each product.

G. Time for Completion

1. Requests for time extensions to Delivery Orders shall be made promptly. Delays of the work due to circumstances beyond the control of the Contractor shall be adequately documented and submitted to the Owner with any request for an extension of the time of Completion.
2. The time allowed in Delivery Orders for Substantial Completion includes five (5) calendar days per calendar month for delays due to inclement weather. Delays due to weather beyond the five days may be requested as a time extension to the time for completion. The Contractor shall submit job site weather data supporting the claim for an extension of time.
3. Should completion of the Project extend past the original or amended contract substantial completion date, the Owner will retain as liquidated damages and not as a penalty the amount listed on the Delivery Order and reduce the Contractor's final payment by that amount.

H. Guarantees and Warranties

1. The Contractor shall remedy and make good all defects in material and workmanship at no additional cost to the Owner and pay for any damage to other work or property resulting from such defects for a period of one year from the date of Substantial Completion, excepting

damage that is caused by misuse or abuse by the Owner. All warranties may be assigned by the Owner at no cost to the Owner and without the approval of the Contractor.

2. Where guarantees and/or warranties are required in the technical sections of the specifications, or as noted on the drawings, exceeding the one-year guarantee period, the extended warranty period will govern.

I. Use of the Site

1. The Contractor shall confine its operations to areas permitted by laws and ordinances, and as defined in the Contract Documents. The site must be maintained in a reasonably clean condition, free of trash and debris. The Contractor shall, on a regular basis or as specifically requested by the Owner, remove from the site all trash, debris, tools and equipment no longer needed for the work.
2. The Contractor shall provide access to the work in progress for representatives of the Owner, the A/E and for all authorities having jurisdiction over the Work.

J. Taxes

1. The Contractor shall include in its Bid and pay for, all taxes in effect or scheduled to go into effect at the time of bidding or at the completion of negotiations.
2. The Contractor's attention is directed to Title 12, Chapter 8, of the SC Code of Laws, as amended, concerning withholding of tax for non-residents, employees, contractors and subcontractors.

ARTICLE 5- PAYMENTS

- A. The Owner shall make payments as established in the Delivery Order no more often than monthly to the Contractor for acceptable work, in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- B. Not-to-exceed payments: The Owner shall pay the Contractor no more than the Not-to-Exceed amount shown on the Delivery Order. The Contractor's request for payment shall be based on actual units, using the attached Unit Price Work units, not exceeding the scheduled amounts shown on each Delivery Order.
- C. The Contractor shall make payments to Subcontractors and suppliers for acceptable work performed and materials furnished in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- D. Accompanying each Application for Payment, the Contractor shall submit to the A/E a Schedule of Values allocating all the various portions of the Work, and a Construction Schedule, to be used by the architect as a basis for reviewing the Application for Payment. The Owner shall make progress payments to the Contractor for acceptable work completed based on the approved Schedule of Values and the A/Es' evaluation of the Contractor's Application for Payment. The Owner shall retain ten (10) percent of the completed work until the Final Application for Payment is paid.
- E. The Contractor's Final Application for Payment may be submitted when the following have occurred:
 1. The Contractor has fully performed the Work of the Delivery Order, including the acceptable completion of all punch list items; and,
 2. The Contractor furnishes a Consent of Surety to Final Payment (for bonded projects) and Releases of Lien from subcontractors and suppliers; and,
 3. The Contractor has furnished to the satisfaction of the A/E and the Owner all operating and maintenance manuals, product information, supplier warranties and guarantees and all other project completion documents; and,
 4. The Contractor has completed all training and other startup/turnover support activities with the Owner staff.
- F. If the work is completed to the satisfaction of the A/E, the A/E shall certify the application and the Owner shall make final payment.

ARTICLE 6 – CLAIMS

- A. Each party may assert a Claim requesting an adjustment of the Contract Sum, a change in the Contract Time for completion, or other relief with respect to the terms of the Contract.

- B. Claims under this Contract shall be submitted by written notice that a Claim is being asserted. The responsibility to substantiate a Claim rests with the party making the Claim.
- C. Claims arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. By failing to give written notice of a Claim within the time required by this paragraph a party expressly waives its claim.
- D. Pending a resolution of the Claim, including any dispute resolution under this Contract, the Contractor shall proceed to perform as required by the Contract and the Owner shall continue to make payments in accordance with this Contract.

ARTICLE 7 – DISPUTE RESOLUTION

The parties agree to attempt in good faith to resolve their disputes arising from a claim or controversy arising out of or relating to the Contract. To the extent that the parties are unable to reach a resolution, the parties agree that any suit, action or proceeding arising out of or relating to the Contract shall be instituted and maintained only in a state or federal court located in Charleston County. The Contractor agrees that any act by the Owner regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase "the State" includes any governmental entity transacting business with the Contractor pursuant to the Contract.

ARTICLE 8 - SUSPENSION OR TERMINATION OF THE CONTRACT

- A. Owner's Right of Termination
 1. The Owner may, at any time, terminate the Contract, in whole or in part, with or without cause for the Owner's convenience, upon seven (7) days written notice to the Contractor.
 2. The Owner may, upon written consent of the Contractor, reinstate the terminated portion of this Contract in whole or in part if it is determined that it is necessary or advantageous to the Owner. Compensation shall be equitably negotiated by agreement between the Owner and Contractor.
- B. Contractor's Right of Termination
 1. The Contractor may terminate the Contract if work is stopped through no fault of the Contractor, or other persons performing work either directly or indirectly for the contractor, for a period of time exceeding sixty (60) consecutive calendar days due to a court order or other public authority having jurisdiction; or a National emergency which requires the work to be stopped.
 2. The Contractor may, upon seven (7) days written notice to the Owner and the A/E, terminate the Contract for the reasons stated above and be compensated for work completed and materials stored in accordance with the Contract Documents.
- C. Owner's Right of Suspension
 1. The Owner may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Owner;
 2. The Contract Sum and Contract Time will be adjusted for increases in cost to the Contractor due to the delay or interruption except that no increase will be granted for delays or interruptions that are, or would have been, the responsibility of the Contractor or an equitable adjustment covered under other provisions of the Contract.

ARTICLE 9 – PROTECTION OF PERSONS AND PROPERTY

- A. The Contractor is responsible for job-site safety and the protection of persons and property within the work site. The Contractor shall comply with all applicable laws, rules and regulations regarding safety.
- B. If during the course of executing the Work, the Contractor encounters material believed to be hazardous or of archeological significance, then the Contractor shall immediately stop work in the affected area and report the conditions to the Owner and the A/E in writing. Except by written agreement of the Owner and Contractor, the Contractor shall not resume work until the material has been rendered harmless, removed or protected.

- C. This Article shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).
- D. For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Contract Documents. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

ARTICLE 10 – INSURANCE AND BONDS

- A. The Contractor shall purchase and maintain insurance to protect against claims that may arise out of the Contractor's operations under the work of this Contract. The limits shall be for not less than the limits set forth in this Article, shall be written on an occurrence basis and shall be in force for the duration of the Contract.
- B. The Contractor's Liability Insurance shall include all major divisions of coverage and is to be based on a Commercial basis including the following:
1. Premises – Operations.
 2. Independent Contractor's Protective.
 3. Products and Completed Operations.
 4. Personal and Advertising Injury.
 5. Contractual, including specified provisions for Contractor's obligations.
 6. Broad Form Property Damage, including Completed Operations.
 7. Owned, Non-Owned and Hired Vehicles.
- C. The Insurance required by this Article shall be written for not less than the following limits or greater if required by law or other provisions in the contract:
1. Commercial General Liability:
 - a. General Aggregate (per project) \$ 1,000,000
 - b. Products/Completed Operations \$ 1,000,000
 - c. Personal and Advertising Injury \$ 1,000,000
 - d. Each Occurrence \$ 1,000,000
 - e. Fire Damage \$ 50,000
 - f. Medical Expense (any one person) \$ 5,000
 2. Business Auto Liability (including all owned, non-owned, and hired vehicles):
 - a. Combined Single Limit \$ 1,000,000

-OR-

 - b. Bodily Injury & Property Damage (each) \$ 1,000,000
 3. Workers Compensation
 - a. State Statutory
 - b. Employer's Liability \$ 100,000 Per Accident
\$ 500,000 Disease, Policy Limit
\$100,000 Disease, Each Employee
- D. The aggregate Limits of the Contractor's Insurance shall apply, in total for this Contract. This shall be indicated on the Certificate of Insurance as "Per Project", or in an attached policy amendment.
- E. The Owner shall be listed as the certificate holder of the Contractor's Liability Insurance.
- F. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with the Owner prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Owner as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary, and that any liability insurance of the Owner

shall be secondary and noncontributory. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior written notice has been given to the Owner.

- G. In no event shall any failure of the Owner to receive certified copies or certificates of policies required under this Article or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the contractor's obligations to obtain insurance pursuant to this Article. The obligation to procure and maintain any insurance required by this Article is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies. Cancellation of insurance shall be grounds for termination of the contract.
- H. **Bonds**
If required by the Contract Documents, and prior to being issued a Notice to Proceed, the Contractor shall deliver to the Owner properly executed Performance and Payment Bonds. Failure to provide the Bonds may indicate that the Contractor is in material breach of its responsibilities under the Contract.
1. Bonds shall each be in the amount of 100% of the amount of the Contract.
 2. The Surety providing the Bonds shall have, at a minimum a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times the contract amount. The Bonds shall:
 - a. be issued by a surety company licensed to do business in South Carolina; and,
 - b. be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
 - c. remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer; and,
 - d. display the Surety's' Bond Number.

ARTICLE 11 – CORRECTION OF WORK

- A. The Contractor shall promptly and with due diligence, correct work rejected by the A/E or the Owner for failure to conform to the requirements of the Contract, whether such defective work is observed before or after Final Completion. The Contractor shall pay for correcting the deficient work including additional testing and inspections and any compensation for A/E services and expenses involved.
- B. If the Contractor fails to carry out the work in accordance with the Contract Documents, and fails within a seven (7) day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies they may have, proceed to correct such deficiencies. In such case, an appropriate Construction Change Directive shall be issued deducting from payments to the Contractor the reasonable cost of correcting such deficiencies including the Owners expenses, and compensation to the A/E, if necessary.
- C. The Contractor and the Surety (if the Contract is bonded) remain liable for any excess cost or damages resulting from actions set forth in this Article.

ARTICLE 12 – CONSTRUCTION BY OWNER

- A. The Owner reserves the right to do work with its own forces or award separate contracts for work on the same project.
- B. The Contractor agrees to allow access to the site by the Owner's work force or separate contractor(s), and agrees to assist in coordinating the progress of the work with the Owner.
- C. The Owner shall have the responsibility to coordinate the activities of the various contractors working at the project location.

ARTICLE 13 – SUBCONTRACTORS

If the Contractor engages subcontractors to provide work on the Delivery Order, then the Contractor shall include, or cause to be included, in the agreement with those entities, all provisions contained in the Contract. Subcontractors and sub-subcontractors shall be bound by the same provisions as the Contractor and shall preserve and protect the rights of the Owner.

ARTICLE 14 – COMPLETION AND CLOSEOUT

- A. The Contractor shall have completed the unfinished and defective work listed in the "punch list" and notify the A/E of its completion. The A/E will schedule a Final Inspection and require the Contractor to demonstrate that all equipment and systems operate as designed. The Owner may elect to have other persons, firms or agencies participate in the inspections.
- B. Failure of the Contractor to achieve completion within the allowed time shall entitle the Owner to consider the Contractor in breach of the Contract.
- C. If more than one Final Inspection is required, the Contractor shall reimburse the Owner for all costs associated with the re-inspection, if any.
- D. Final Payment shall not be due, nor shall retained funds be released, until the Contractor complies with the requirements of Article 4.

ARTICLE 15 – MISCELLANEOUS PROVISIONS

- A. The Contractor and Owner each bind themselves, their partners, directors, officers, successors, executors, administrators, assigns and legal representatives in respect to all provisions of this contract. Neither party shall assign, sublet or transfer their interest in this Contract without the written consent of the other party.
- B. This Contract represents the entire and integrated agreement between the Owner and Contractor. It supersedes any and all prior and contemporaneous communications, representations and agreements, whether written or oral relating to the subject matter of this Contract.
- C. Nothing in this Contract shall be construed to give any rights, contractual relationship or benefit to a third party against either the Owner or the Contractor.
- D. Unless otherwise included in the Contract, nothing shall require the Contractor to discover, handle, remove or dispose of any hazardous or toxic materials in any form at the project site.

ARTICLE 16 – GOVERNING LAW

- A. This Contract shall comply with South Carolina Law 11-35-3310 and related Statutes.

ARTICLE 17 – OTHER PROVISIONS (if any)

Not Applicable ☒

WFR Southeast LLC
Print Contractor Name

City of Charleston
Request for Proposal

Storm Drain Cleaning & Inspection Services

PROPOSAL SUBMITTAL SHEET

Section 1 – Bid Comparison

The undersigned agrees to furnish all the labor, materials, equipment, superintendence, insurance, and other accessories and services necessary to perform and complete all of the work for the following schedule of unit prices:

Description	Unit	Cost
Storm System CCTV Video Inspection – Pre & Post Lining, including DVD & Report (all pipes ≥ 12")	LF	\$3.75
(Percentage full shall be based on the average depth of sediments over the project length)		
CLEANING EXISTING PIPE (25% full)		
INSIDE DIA ≤ 15"	LF	\$8.65
15" < INSIDE DIA ≤ 24"	LF	\$8.85
24" < INSIDE DIA ≤ 48"	LF	\$11.25
48" < INSIDE DIA ≤ 60"	LF	\$13.50
CLEANING EXISTING PIPE (25% - 50% full)		
INSIDE DIA ≤ 15"	LF	\$8.00
15" < INSIDE DIA ≤ 24"	LF	\$11.25
24" < INSIDE DIA ≤ 48"	LF	\$14.50
48" < INSIDE DIA ≤ 60"	LF	\$17.00
CLEANING EXISTING PIPE (50% full or greater)		
INSIDE DIA ≤ 15"	LF	\$22.00
15" < INSIDE DIA ≤ 24"	LF	\$24.00
24" < INSIDE DIA ≤ 48"	LF	\$26.00
48" < INSIDE DIA ≤ 60"	LF	\$28.00
WATER MANAGEMENT - PUMPING		
INCIDENTAL PUMPING	DAY	\$935.00
PUMPING (de-watering)	DAY	\$950.00

Storm System Cleaning & Inspection Services
City of Charleston Department of Public Service

Page - 6
Contractor Pre-Qualification

Section 1 – (continued)

Below – List type of Trenchless, No-Dig Pipe Repair offered by Contractor

TRENCHLESS, NO-DIG PIPE REPAIR	Unit	
1. Cured-In-Place Pipe Lining (gravity and pressure)		
2. Pipe Bursting (gravity and pressure)		
3. Eco Cast Liner Technology		
4. Slip Lining		
5. CCTV and Inspection		

TRENCHLESS, NO-DIG PIPE REPAIR

Provide a description of each Trenchless, No-Dig Pipe Repair type offered above by Contractor:

1. CIPP - is a trenchless repair process that involves "impregnating" a polyester felt lining with resin inverting the liner and then pulling the coated liner through the existing pipe.
2. Pipe Bursting - IPR was a pioneer in pipe bursting, which is the only trenchless pipe rehabilitation technique that can increase the diameter of the existing pipe.
3. EcoCast Liner Technology - EcoCast will cost-effectively and structurally repair large diameter sanitary storm sewer piping, and any structure or deck surface.
4. Slip Lining - is completed by installing a smaller, "carrier pipe" into a larger "host pipe". Grout is inserted into the annular space between the two pipes, and then both the upstream and downstream ends are sealed.
5. CCTV and Inspection - Utilize cameras for a thorough inspection is made to assess the condition of the joints main line and as well as identify cracks, holes or other breaches in the pipe.

Section 8 - MBE Good Faith Effort

Charleston County City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project. A copy of the Minority/Women-Owned Business Enterprise Compliance Provisions can be found on the City's website at <http://www.charleston-sc.gov/index.aspx?NID=127>. The selected Contractor will be subject to the requirements of this policy. The Contractor should contact the City's Minority Business Enterprise Office at (843) 373-7247 to acquire the appropriate documents to submit with the Pre-qualification Proposal.

SUBMITTAL CERTIFICATION

I hereby warrant that the information presented in this Statement of Qualifications is true, accurate, and complete.

By: ROBERT W. STEWART [Signature]
(printed name) (signature)

Title: GENERAL MANAGER

Date: 6/12/2014

NOTIFICATION OF PRE-QUALIFIED CONTRACTORS

All Contractors who submit Pre-Qualification Proposals will be notified in writing if they did or did not pre-qualify. Only those Contractors which are pre-qualified will be allowed to bid on these Projects. The Owner's decision will be final.

City of Charleston
Minority/Women-Owned Business Enterprise (MWBE)
Compliance Provisions

This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit the form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

APPLICATION:

Charleston City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project.

Definitions:

MBE is defined as a small business owned and controlled by minorities.

WBE is defined as a small business owned and controlled by women.

This means that fifty-one percent (51%) of the business must be owned by minorities or women and that they must control the management and daily operations of the business.

The guidelines for participation in City of Charleston's contracts for services, including construction, are hereby made a part of any contract resulting from this solicitation. These requirements shall apply to all contracts and resulting subcontracts issued by contractors. A list of certified minority-owned and women-owned business enterprises can be found on the City of Charleston's web site www.charleston-sc.gov; or by contacting Theron Snape, MBE Manager, 145 King Street, Charleston, SC 29401, (843) 973-7247, snypet@charleston-sc.gov.

COMPLIANCE REQUIREMENTS:

1. The Offeror shall provide, **with the submittal**, the following Affidavits properly executed which signify that the Offeror understands and agrees to the incorporated contract provisions:

☐ ***Affidavit A - Listing of the Good Faith Effort & Identification of Minority and Women-owned Business Participation*** as certification that efforts were made to use MWBE businesses on this project,

AND

☐ ***Affidavit B - Work to be Performed by Minority and/or Women-owned Firms***
OR

☒ ***Affidavit C - Intent to Perform Contract with Own Workforce***, in making this certification the Offeror states that the Offeror does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces. *CIPP PORTION*

All affidavits supplied by the Offeror shall become a part of the agreement between the Contractor and the City of Charleston for performance of this contract. Failure to comply with any of these statements, certifications, or intentions stated in the Affidavits, or with the MBE/WBE provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Charleston whether to terminate the contract for breach. In addition any breach may result in the bidder being prohibited from participation in future construction bids as determined by the City of Charleston.

The Contractor shall provide an itemized statement of payments to each MBE and WBE subcontractor before final payment is processed.

Name of Company: IPR SOUTHEAST LLC
Wendy Wilkes Signature WENDY WILKES Print Name
Corporate Controller Title 8/27/2014 Date
Attest: Allyson Jones

AFFIDAVIT C

**City of Charleston, South Carolina
Intent to Perform Contract with Own Workforce.**

Affidavit of IPR Southeast LLC
(Name of Offeror)

I hereby certify that it is our intent to perform 100% of the work required for the CLPP portion
of IDC Stormwater System Cleaning and
contract.

Inspection Services (Name of Project)

In making this certification, the Offeror states that the Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all the elements of the work on this project with his/her own current work forces, and

The Offeror agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Offeror to the commitments contained herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: 8/25/2014 Name of Authorized Officer (Print/Type): WENDY WILKES

Signature: [Handwritten Signature]

Title: Corporate Controller

Sworn to before me this 25 day of August, 2014.

Notary Public for the State of GA

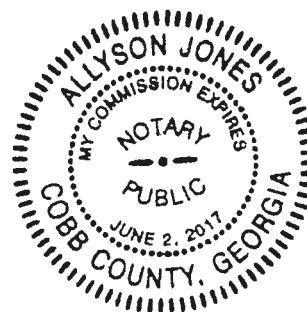
My Commission Expires: June 2, 2017

Print Name: Allyson Jones Allyson Jones

Phone Number: 404-969-3073

Address: 5207 Bill Rabbit Rd.
Stone Mountain, GA 30083

Notary Seal:



COMMITTEE / COUNCIL AGENDA

10

TO: **Joseph P. Riley, Jr., Mayor**
FROM: **J. Frank Newham** DEPT. **Public Service**
SUBJECT: **STORM DRAIN CLEANING & INSPECTION – INDEFINITE DELIVERY CONTRACT**
REQUEST: **Approval of Southern Premier Contractors, Inc.'s proposal to perform various storm drain cleaning & inspection services per their response to a RFQ for these services. Contract is for two years with option of two one-year extensions.**

COMMITTEE OF COUNCIL: **Ways & Means** DATE: **September 23, 2014**

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Michael J. Brown</i>	<input checked="" type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Dir. Dept. of Public Serv.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>James D. G.</i>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept./Div: **050345** Account #: **52425**

Balance in Account **\$600,000** Amount needed for this item **\$600,000**

NEED: Identify any critical time constraint(s).

CFO's Signature: *Jmy Wharton*

FISCAL IMPACT:

Mayor's Signature: *Joseph P. Riley, Jr.*

Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.



City of Charleston

South Carolina

Department of Public Service

JOSEPH P. RILEY, JR.
Mayor

LAURA S. CABINESS, P.E.
Director

MEMORANDUM

August 28, 2014

To: Laura S. Cabiness, P.E.

From: J. Frank Newham

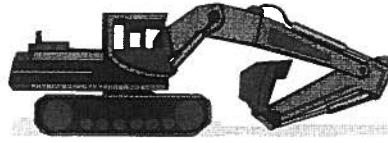
RE: Indefinite Delivery contract - Storm Drain Cleaning and Inspection Services

The attached Indefinite Delivery Contract (IDC) is ready to send to Council for their consideration. As you know, we prequalified contractors to perform this service on an on-call basis. The intent was to have a "pool" of contractors that we could call to assist with various pipe cleaning and video services that our forces could not perform. We have selected four firms to assist in this contract period. The need to retain multiple firms is due to the immediate availability of each firm and the need (in some cases) for a rapid response.

This is a multi-year contract. Each year we budget funds for maintenance and repair. This contract allows us to spend up to \$600,000 over multiple years but the practice will be that we will only spend up to the amount actually available for repairs and that it will be distributed between the IDC contracts depending on cost and availability of the contractor to perform the work when it is needed.

Please let me know if you have any questions or need additional information.

jfn



**Southern Premier
Contractors, Inc.**

August 20, 2014

City of Charleston
Department of Public Service
75 Calhoun Street
Charleston, SC 29401

RE: Signed Contract City of Charleston
Stormwater System Cleaning and Inspection Services

Dear Sir/Madam,

Please find enclosed three sets of signed contracts for the following:

- IDC Stormwater System Cleaning and Inspection Services, City of Charleston Contract

If you have any questions or need any additional information please let me know.

Thank you,

A handwritten signature in black ink, appearing to read "Paige Vinson". The signature is fluid and cursive, written over a light background.

Paige Vinson
Southern Premier Contractors, Inc.
paige@southernpremiercontractors.com
770.533.0311

City of Charleston Construction Contract

THIS CONTRACT, made this _____ day of _____, 20____ by and between:

The Owner: City of Charleston and the Contractor: Southern Premier Contractors, Inc.
Department of Public Service 3951 Hidden Hills Drive
75 Calhoun Street Gainesville, GA 30504
Charleston, SC 29401 _____

WHEREAS, the Owner requires the construction of the following project, identified as follows:

IDC - Stormwater System Cleaning & Inspection Services
(Project Name)

Whereas, the CONTRACTOR, whose South Carolina contractor's license is GXXXXX, is prepared and qualified to provide such Services;

NOW THEREFORE, the Owner and contractor agree to all of the terms and conditions set forth in this Contract.

THE EFFECTIVE DATE of this Contract shall commence as of the date written above and the term shall be for a period of two (2) calendar years with the option to extend the effective period of the contract for up to four (4) years.

THE SERVICES REQUESTED by the Owner shall be set forth in a Request for Proposal for specific construction delivery orders. The contractor agrees to accept all such requests for services issued by the Owner, unless the work requested is not within the expertise of the contractor; or as agreed by the Owner for just cause in the mutual interests of the Owner and contractor.

THE SERVICES PROVIDED by the contractor shall be set forth in a contractor's Cost Proposal which, once approved by the Owner, shall be incorporated into this Contract, and all work shall be performed by the contractor in accordance with the terms and conditions contained in this Contract.

PAYMENTS TO THE CONTRACTOR for acceptable work performed shall not exceed a total of \$600,000 with no individual Delivery Order exceeding \$200,000.

THE CONTRACT SUM payable to the contractor on account of an individual Delivery Order shall be a NOT-TO-EXCEED amount based on the costs set forth on the attached Unit Price Bid Sheet.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS CONTRACT ON THE DAY AND YEAR FIRST WRITTEN ABOVE.

OWNER: City of Charleston

CONTRACTOR: Southern Premier Contractors, Inc.

BY: _____

Joseph P. Riley, Jr.
Mayor

BY: 
(Signature of Contractor Representative)

Michael Massey
(Name of Contractor Representative)

ITS: President

ATTACHMENTS:

Unit Price bid sheet (2 pgs), WMBE Compliance Provisions (6 pgs)

General Conditions

ARTICLE 1 – CONTRACT DOCUMENTS

- A. The Contract Documents forming this agreement shall consist of the following:
 - 1. a fully executed Construction Contract (this document) and any listed attachments thereto;
 - 2. the Contractor's Statement of Qualification date June 13, 2014
 - 3. the Contractor's completed Bid Form;
 - 4. any Delivery Order issued under this contract;
 - 5. all Change Orders, Change Directives, or Delivery Order amendment modifying a Delivery Order;
 - 6. other documents as listed in Article 16.

ARTICLE 2 - AUTHORIZATION OF SERVICES

- A. The Owner will initiate a Request for Proposal for specific services as required for the work.
- B. The Contractors Unit Price Work, which is attached to this agreement and is hereby incorporated by this reference, shall be a part of this Contract for its duration and is to be utilized in the preparation of cost proposals for all Delivery Orders to be issued.
- C. When requested by the Owner, the Contractor shall submit a Cost Proposal to provide the necessary construction services for the specific Delivery Order. The proposal shall be in the form of a "Lump Sum" or a "Not-to-Exceed" contract as requested by the Owner (See Article 5). Construction services not included in the Unit Price Work are to be listed separately.
- D. The Contractor shall include in the Cost Proposal for each Delivery Order a schedule showing the anticipated dates for completion of various milestones of the Work to be performed by the Contractor.
- E. The Owner will review the proposal in a timely manner and accept or reject it. Prior to issuing a Delivery Order, the Owner reserves the right to negotiate with the Contractor to revise the scope of work and fees that are believed to be in the best interest of the Owner.
- F. Upon acceptance of a proposal the Owner will issue a Delivery Order toward this Contract.

ARTICLE 3 – GENERAL PROVISIONS

- A. The Contractor shall not incur any expense chargeable to the Owner until a Delivery Order has been authorized and fully executed by both the Owner and the Contractor.
- B. The Contractor warrants to the Owner that:
 - 1. it and its subcontractors (if any) are financially able to complete the work;
 - 2. it will perform all obligations, furnish all plant, material, equipment, tools, transportation, supplies and labor to complete the work assigned;
 - 3. it is authorized and licensed to do business in the State of South Carolina and the City of Charleston;
 - 4. it will perform the Work with care and diligence and in a professional and workmanlike manner;
 - 5. it will visit the work site and become reasonably apprised of the conditions in and around the work area.
- C. Contractor's Rights and Responsibilities
In addition to any other rights and responsibilities contained in this Agreement, the Contractor shall:
 - 1. pay for required construction permits or business license fees, labor, materials, equipment, tools, transportation, supervision, testing, etc, as required for the performance of the Work in the Delivery Order;
 - 2. visit the work site and obtain information to assist in familiarization with the work site, its conditions and any limitations that would affect the performance of the Work in the Delivery Order;
 - 3. have the right to rely on information contained in the Contract Documents, but shall give prompt and timely notice to the Owner of any apparent deficiencies or inconsistencies in the information furnished by the Owner or its A/E;

4. be responsible for all construction means, methods, techniques, procedures and safety measures in the performance of the Work in the Delivery Order;
 5. employ only persons skilled in the work for which it is to do, employ an experienced superintendent to supervise the work who shall be responsible for the acts or omissions of the Contractor's agents and employees or those of sub-contractors and their agents and employees acting on behalf of the Contractor;
 6. have, at the time of execution and for the duration of all Delivery Orders, all professional and business insurance, licenses and permits required to provide the required Services in the State of South Carolina, the City of Charleston and as required by this Contract.
- D. Owner's Rights and Responsibilities
- In addition to any other rights and responsibilities contained in this Agreement, the Owner shall:
1. provide the contractor with available information regarding the Work and the work area for each Delivery Order;
 2. secure and pay for all design permits, assessments, and easements except as required by the Contract Documents;
 3. pay the Contractor for acceptable work performed, in accordance with the provisions of this Contract and its related Delivery Order;
 4. act as the A/E in the absence of a licensed design professional.
- E. A/E's Rights and Responsibilities
- In addition to any other rights and responsibilities contained in the Agreement, the A/E shall:
1. represent the Owner during the construction process through final completion of the project, and as requested during the warranty period. The A/E will act on behalf of the Owner only to the extent provided in the Contract Documents or otherwise agreed by the Owner;
 2. make periodic visits to the site during construction administration to become familiar with the progress and quality of the Work and to determine if the Work is being performed in a manner indicating that the Work is generally progressing in accordance with the Contract Documents;
 3. make recommendations to the Owner as to the acceptance or rejection of the Work and communicate the Owner's decision to the Contractor;
 4. review and approve or reject shop drawings and samples submitted by the Contractor;
 5. respond promptly to all requests for information or clarification from the Owner or the Contractor;
 6. make the initial interpretation and decision on matters concerning performance under, and the requirements of, the Contract Documents, upon written request of either the Owner or Contractor. The interpretation or decision of the A/E shall be final, subject to the dispute resolution provisions of this Contract;
 7. not be responsible for construction means, methods, techniques, procedures and safety measures in the performance of the work or acts of omission of the Contractor, Subcontractors or any other entity performing work on the site;
 8. review periodic requests for payment, and approve or reject the request, in whole or in part;
 9. prepare Change Orders or Change Directives as directed by the Owner.

ARTICLE 4 – CONSTRUCTION ADMINISTRATION

- A. Shop Drawings and Samples
1. The Contractor shall review and approve Shop Drawings and Samples prior to their submission to the A/E. The Contractor's review shall be for compliance with the requirements of the Contract Documents and to ensure complete coordination of the Work.
 2. The Contractor shall submit the number of sets as specified in the Contract Documents, or in the absence of a specification, submit enough copies for the Owner to retain two copies plus the number desired to be returned to the Contractor.
 3. The A/E will review the shop drawings and samples with reasonable promptness but only for conformity with the design.
 4. The Contractor shall submit samples as required by the Contract Documents. The final installed product shall match the approved sample.

- B. Materials and Workmanship
 1. The Contractor shall not allow the use of any asbestos-containing product.
 2. The Contractor shall not use or allow the use of lead material in public water application. Lead-free solder, flux and pipe must be used in all public drinking water and wastewater applications. Lead-free solder and flux is defined as containing less the 0.2% lead while valves, pipes and appurtenances must contain less than 8.0% lead.
 3. The Contractor warrants that unless otherwise specified or permitted by the Contract Documents, all material shall be new, in first class condition, and installed using workmanship of the highest quality in accordance with the Contract Documents.
- C. Inspection and Testing of Materials
 1. The Contractor shall have performed and documented all inspections and tests required by the Contract Documents, including those required by building officials.
 2. The Contractor shall leave uncovered all areas of work that are called out in the Contract Documents to be left uncovered, or the A/E requests to be left uncovered prior to being inspected. The Contractor shall give adequate notice to the A/E of the time requested for an inspection of these areas.
- D. Substitutions
 1. Wherever the Contract Documents specify a particular product, article, appliance, equipment, or material and it is designated by manufacturer and model number, it is the intent to designate a level of quality, finish, appearance, function, or other factor that was desirable to have incorporated into the design. Equivalent products of alternate manufacturers may be used, but must meet or exceed the specification for the original product and must be approved by the A/E.
 2. The Contractor shall not substitute any product, article, appliance, equipment, or material that is specified without prior written approval from the A/E, which shall be granted only with the concurrence of the Owner.
- E. Changes in the Work
 1. Only the Owner may authorize changes in the scope of the Delivery Order. Such changes shall be made by issuing either a Change Order or a Construction Change Directive, and the Contractor shall execute the changed work promptly.
 2. The Contractor shall provide supporting information as requested by the A/E or the Owner to document the cost of any changed work.
 3. In the absence of a total agreement concerning the item(s) for a Change Order, a Construction Change Directive shall be issued and the Contractor shall proceed diligently with performance of the work required.
- F. Receiving and Storing Materials and Equipment
 1. The Contractor shall have an authorized person or persons to receive all items and shall properly unload, check for completeness of shipments, and in-transit damage.
 2. The Contractor shall properly handle and store materials, supplies, equipment etc. in accordance with the Delivery Order or manufacturer's printed instructions of each product.
- G. Time for Completion
 1. Requests for time extensions to Delivery Orders shall be made promptly. Delays of the work due to circumstances beyond the control of the Contractor shall be adequately documented and submitted to the Owner with any request for an extension of the time of Completion.
 2. The time allowed in Delivery Orders for Substantial Completion includes five (5) calendar days per calendar month for delays due to inclement weather. Delays due to weather beyond the five days may be requested as a time extension to the time for completion. The Contractor shall submit job site weather data supporting the claim for an extension of time.
 3. Should completion of the Project extend past the original or amended contract substantial completion date, the Owner will retain as liquidated damages and not as a penalty the amount listed on the Delivery Order and reduce the Contractor's final payment by that amount.
- H. Guarantees and Warranties
 1. The Contractor shall remedy and make good all defects in material and workmanship at no additional cost to the Owner and pay for any damage to other work or property resulting from such defects for a period of one year from the date of Substantial Completion, excepting

- damage that is caused by misuse or abuse by the Owner. All warranties may be assigned by the Owner at no cost to the Owner and without the approval of the Contractor.
2. Where guarantees and/or warranties are required in the technical sections of the specifications, or as noted on the drawings, exceeding the one-year guarantee period, the extended warranty period will govern.
- I. Use of the Site
 1. The Contractor shall confine its operations to areas permitted by laws and ordinances, and as defined in the Contract Documents. The site must be maintained in a reasonably clean condition, free of trash and debris. The Contractor shall, on a regular basis or as specifically requested by the Owner, remove from the site all trash, debris, tools and equipment no longer needed for the work.
 2. The Contractor shall provide access to the work in progress for representatives of the Owner, the A/E and for all authorities having jurisdiction over the Work.
 - J. Taxes
 1. The Contractor shall include in its Bid and pay for, all taxes in effect or scheduled to go into effect at the time of bidding or at the completion of negotiations.
 2. The Contractor's attention is directed to Title 12, Chapter 8, of the SC Code of Laws, as amended, concerning withholding of tax for non-residents, employees, contractors and subcontractors.

ARTICLE 5- PAYMENTS

- A. The Owner shall make payments as established in the Delivery Order no more often than monthly to the Contractor for acceptable work, in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- B. Not-to-exceed payments: The Owner shall pay the Contractor no more than the Not-to-Exceed amount shown on the Delivery Order. The Contractor's request for payment shall be based on actual units, using the attached Unit Price Work units, not exceeding the scheduled amounts shown on each Delivery Order.
- C. The Contractor shall make payments to Subcontractors and suppliers for acceptable work performed and materials furnished in accordance with Title 29, Chapter 6 of the SC Code of Laws, as amended.
- D. Accompanying each Application for Payment, the Contractor shall submit to the A/E a Schedule of Values allocating all the various portions of the Work, and a Construction Schedule, to be used by the architect as a basis for reviewing the Application for Payment. The Owner shall make progress payments to the Contractor for acceptable work completed based on the approved Schedule of Values and the A/Es' evaluation of the Contractor's Application for Payment. The Owner shall retain ten (10) percent of the completed work until the Final Application for Payment is paid.
- E. The Contractor's Final Application for Payment may be submitted when the following have occurred:
 1. The Contractor has fully performed the Work of the Delivery Order, including the acceptable completion of all punch list items; and,
 2. The Contractor furnishes a Consent of Surety to Final Payment (for bonded projects) and Releases of Lien from subcontractors and suppliers; and,
 3. The Contractor has furnished to the satisfaction of the A/E and the Owner all operating and maintenance manuals, product information, supplier warranties and guarantees and all other project completion documents; and,
 4. The Contractor has completed all training and other startup/turnover support activities with the Owner staff.
- F. If the work is completed to the satisfaction of the A/E, the A/E shall certify the application and the Owner shall make final payment.

ARTICLE 6 – CLAIMS

- A. Each party may assert a Claim requesting an adjustment of the Contract Sum, a change in the Contract Time for completion, or other relief with respect to the terms of the Contract.

- B. Claims under this Contract shall be submitted by written notice that a Claim is being asserted. The responsibility to substantiate a Claim rests with the party making the Claim.
- C. Claims arising prior to the date final payment is due must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. By failing to give written notice of a Claim within the time required by this paragraph a party expressly waives its claim.
- D. Pending a resolution of the Claim, including any dispute resolution under this Contract, the Contractor shall proceed to perform as required by the Contract and the Owner shall continue to make payments in accordance with this Contract.

ARTICLE 7 – DISPUTE RESOLUTION

The parties agree to attempt in good faith to resolve their disputes arising from a claim or controversy arising out of or relating to the Contract. To the extent that the parties are unable to reach a resolution, the parties agree that any suit, action or proceeding arising out of or relating to the Contract shall be instituted and maintained only in a state or federal court located in Charleston County. The Contractor agrees that any act by the Owner regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase "the State" includes any governmental entity transacting business with the Contractor pursuant to the Contract.

ARTICLE 8 - SUSPENSION OR TERMINATION OF THE CONTRACT

- A. Owner's Right of Termination
 - 1. The Owner may, at any time, terminate the Contract, in whole or in part, with or without cause for the Owner's convenience, upon seven (7) days written notice to the Contractor.
 - 2. The Owner may, upon written consent of the Contractor, reinstate the terminated portion of this Contract in whole or in part if it is determined that it is necessary or advantageous to the Owner. Compensation shall be equitably negotiated by agreement between the Owner and Contractor.
- B. Contractor's Right of Termination
 - 1. The Contractor may terminate the Contract if work is stopped through no fault of the Contractor, or other persons performing work either directly or indirectly for the contractor, for a period of time exceeding sixty (60) consecutive calendar days due to a court order or other public authority having jurisdiction; or a National emergency which requires the work to be stopped.
 - 2. The Contractor may, upon seven (7) days written notice to the Owner and the A/E, terminate the Contract for the reasons stated above and be compensated for work completed and materials stored in accordance with the Contract Documents.
- C. Owner's Right of Suspension
 - 1. The Owner may, at any time, suspend the work, in whole or in part, with or without cause for such period of time as determined by the Owner;
 - 2. The Contract Sum and Contract Time will be adjusted for increases in cost to the Contractor due to the delay or interruption except that no increase will be granted for delays or interruptions that are, or would have been, the responsibility of the Contractor or an equitable adjustment covered under other provisions of the Contract.

ARTICLE 9 – PROTECTION OF PERSONS AND PROPERTY

- A. The Contractor is responsible for job-site safety and the protection of persons and property within the work site. The Contractor shall comply with all applicable laws, rules and regulations regarding safety.
- B. If during the course of executing the Work, the Contractor encounters material believed to be hazardous or of archeological significance, then the Contractor shall immediately stop work in the affected area and report the conditions to the Owner and the A/E in writing. Except by written agreement of the Owner and Contractor, the Contractor shall not resume work until the material has been rendered harmless, removed or protected.

- C. This Article shall apply only to hazardous, toxic or radioactive materials or substances subject to the regulations of agencies having jurisdiction such as, but not limited to, the S.C. Department of Health and Environmental Control (SCDHEC), the U.S. Environmental Protection Agency (USEPA) and the U.S. Nuclear Regulatory Commission (USNRC).
- D. For the purposes of this Contract, the term "rendered harmless" shall be interpreted to mean that measured levels of verified hazardous, toxic or radioactive materials or substances are less than the applicable standards established by authorities having jurisdiction. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible, unless such materials or substances were expressly required by the Contract Documents. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or radioactive, or made up of any items that are hazardous, toxic, or radioactive.

ARTICLE 10 – INSURANCE AND BONDS

- A. The Contractor shall purchase and maintain insurance to protect against claims that may arise out of the Contractor's operations under the work of this Contract. The limits shall be for not less than the limits set forth in this Article, shall be written on an occurrence basis and shall be in force for the duration of the Contract.
- B. The Contractor's Liability Insurance shall include all major divisions of coverage and is to be based on a Commercial basis including the following:
 - 1. Premises – Operations.
 - 2. Independent Contractor's Protective.
 - 3. Products and Completed Operations.
 - 4. Personal and Advertising Injury.
 - 5. Contractual, including specified provisions for Contractor's obligations.
 - 6. Broad Form Property Damage, including Completed Operations.
 - 7. Owned, Non-Owned and Hired Vehicles.
- C. The Insurance required by this Article shall be written for not less than the following limits or greater if required by law or other provisions in the contract:
 - 1. Commercial General Liability:
 - a. General Aggregate (per project) \$ 1,000,000
 - b. Products/Completed Operations \$ 1,000,000
 - c. Personal and Advertising Injury \$ 1,000,000
 - d. Each Occurrence \$ 1,000,000
 - e. Fire Damage \$ 50,000
 - f. Medical Expense (any one person) \$ 5,000
 - 2. Business Auto Liability (including all owned, non-owned, and hired vehicles):
 - a. Combined Single Limit \$ 1,000,000
 - OR-
 - b. Bodily Injury & Property Damage (each) \$ 1,000,000
 - 3. Workers Compensation
 - a. State Statutory
 - b. Employer's Liability \$ 100,000 Per Accident
\$ 500,000 Disease, Policy Limit
\$100,000 Disease, Each Employee
- D. The aggregate Limits of the Contractor's Insurance shall apply, in total for this Contract. This shall be indicated on the Certificate of Insurance as "Per Project", or in an attached policy amendment.
- E. The Owner shall be listed as the certificate holder of the Contractor's Liability Insurance.
- F. Certificates of Insurance shall be in the form of the latest edition of the ACORD 25S and shall be filed with the Owner prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Owner as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary, and that any liability insurance of the Owner

- shall be secondary and noncontributory. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled unless at least fifteen (15) days prior written notice has been given to the Owner.
- G. In no event shall any failure of the Owner to receive certified copies or certificates of policies required under this Article or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the contractor's obligations to obtain insurance pursuant to this Article. The obligation to procure and maintain any insurance required by this Article is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies. Cancellation of insurance shall be grounds for termination of the contract.
- H. Bonds
- If required by the Contract Documents, and prior to being issued a Notice to Proceed, the Contractor shall deliver to the Owner properly executed Performance and Payment Bonds. Failure to provide the Bonds may indicate that the Contractor is in material breach of its responsibilities under the Contract.
1. Bonds shall each be in the amount of 100% of the amount of the Contract.
 2. The Surety providing the Bonds shall have, at a minimum a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V" and in no case less than five (5) times the contract amount. The Bonds shall:
 - a. be issued by a surety company licensed to do business in South Carolina; and,
 - b. be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
 - c. remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer; and,
 - d. display the Surety's' Bond Number.

ARTICLE 11 – CORRECTION OF WORK

- A. The Contractor shall promptly and with due diligence, correct work rejected by the A/E or the Owner for failure to conform to the requirements of the Contract, whether such defective work is observed before or after Final Completion. The Contractor shall pay for correcting the deficient work including additional testing and inspections and any compensation for A/E services and expenses involved.
- B. If the Contractor fails to carry out the work in accordance with the Contract Documents, and fails within a seven (7) day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies they may have, proceed to correct such deficiencies. In such case, an appropriate Construction Change Directive shall be issued deducting from payments to the Contractor the reasonable cost of correcting such deficiencies including the Owners expenses, and compensation to the A/E, if necessary.
- C. The Contractor and the Surety (if the Contract is bonded) remain liable for any excess cost or damages resulting from actions set forth in this Article.

ARTICLE 12 – CONSTRUCTION BY OWNER

- A. The Owner reserves the right to do work with its own forces or award separate contracts for work on the same project.
- B. The Contractor agrees to allow access to the site by the Owner's work force or separate contractor(s), and agrees to assist in coordinating the progress of the work with the Owner.
- C. The Owner shall have the responsibility to coordinate the activities of the various contractors working at the project location.

ARTICLE 13 – SUBCONTRACTORS

If the Contractor engages subcontractors to provide work on the Delivery Order, then the Contractor shall include, or cause to be included, in the agreement with those entities, all provisions contained in the Contract. Subcontractors and sub-subcontractors shall be bound by the same provisions as the Contractor and shall preserve and protect the rights of the Owner.

ARTICLE 14 – COMPLETION AND CLOSEOUT

- A. The Contractor shall have completed the unfinished and defective work listed in the “punch list” and notify the A/E of its completion. The A/E will schedule a Final Inspection and require the Contractor to demonstrate that all equipment and systems operate as designed. The Owner may elect to have other persons, firms or agencies participate in the inspections.
- B. Failure of the Contractor to achieve completion within the allowed time shall entitle the Owner to consider the Contractor in breach of the Contract.
- C. If more than one Final Inspection is required, the Contractor shall reimburse the Owner for all costs associated with the re-inspection, if any.
- D. Final Payment shall not be due, nor shall retained funds be released, until the Contractor complies with the requirements of Article 4.

ARTICLE 15 – MISCELLANEOUS PROVISIONS

- A. The Contractor and Owner each bind themselves, their partners, directors, officers, successors, executors, administrators, assigns and legal representatives in respect to all provisions of this contract. Neither party shall assign, sublet or transfer their interest in this Contract without the written consent of the other party.
- B. This Contract represents the entire and integrated agreement between the Owner and Contractor. It supersedes any and all prior and contemporaneous communications, representations and agreements, whether written or oral relating to the subject matter of this Contract.
- C. Nothing in this Contract shall be construed to give any rights, contractual relationship or benefit to a third party against either the Owner or the Contractor.
- D. Unless otherwise included in the Contract, nothing shall require the Contractor to discover, handle, remove or dispose of any hazardous or toxic materials in any form at the project site.

ARTICLE 16 – GOVERNING LAW

- A. This Contract shall comply with South Carolina Law 11-35-3310 and related Statutes.

ARTICLE 17 – OTHER PROVISIONS (if any)

Not Applicable ☒

Southern Premier Contractors, Inc.
Print Contractor Name

City of Charleston
Request for Proposal

Storm Drain Cleaning & Inspection Services

PROPOSAL SUBMITTAL SHEET

Section 1 – Bid Comparison

The undersigned agrees to furnish all the labor, materials, equipment, superintendence, insurance, and other accessories and services necessary to perform and complete all of the work for the following schedule of unit prices:

Description	Unit	Cost
Storm System CCTV Video Inspection – Pre & Post Lining, including DVD & Report (all pipes ≥ 12")	LF	\$3.50

(Percentage full shall be based on the average depth of sediments over the project length)

CLEANING EXISTING PIPE (25% full)		
INSIDE DIA ≤ 15"	LF	\$6.00
15" < INSIDE DIA ≤ 24"	LF	\$8.00
24" < INSIDE DIA ≤ 48"	LF	\$10.00
48" < INSIDE DIA ≤ 60"	LF	\$12.00

CLEANING EXISTING PIPE (25% - 50% full)		
INSIDE DIA ≤ 15"	LF	\$8.00
15" < INSIDE DIA ≤ 24"	LF	\$10.00
24" < INSIDE DIA ≤ 48"	LF	\$13.00
48" < INSIDE DIA ≤ 60"	LF	\$15.00

CLEANING EXISTING PIPE (50% full or greater)		
INSIDE DIA ≤ 15"	LF	\$19.00
15" < INSIDE DIA ≤ 24"	LF	\$21.00
24" < INSIDE DIA ≤ 48"	LF	\$23.00
48" < INSIDE DIA ≤ 60"	LF	\$25.00

WATER MANAGEMENT - PUMPING		
INCIDENTAL PUMPING	DAY	\$800.00
PUMPING (de-watering)	DAY	\$800.00

Storm System Cleaning & Inspection Services
City of Charleston Department of Public Service

Page - 6
Contractor Pre-Qualification

Section 1 – (continued)

Below – List type of Trenchless, No-Dig Pipe Repair offered by Contractor

TRENCHLESS, NO-DIG PIPE REPAIR		Unit	
1.	CIPP		
2.	SPIN CASTING		
3.	SLIP LINING		
4.			
5.			

TRENCHLESS, NO-DIG PIPE REPAIR

Provide a description of each Trenchless, No-Dig Pipe Repair type offered above by Contractor:

1. CIPP LINER - Inverting a liner in existing pipe from structure to structure and curing with steam or water.
2. SPIN CASTING - Spraying a existing pipe with polymer cementitious spray, this is typically used for large pipe size and manholes.
3. SLIP LINING - Insert an HDPE pipe into an existing pipe and grouting the space between existing pipe and new pipe.
- 4.
- 5.

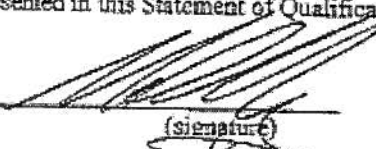
Section 8 - MBE Good Faith Effort

Charleston County City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project. A copy of the Minority/Women-Owned Business Enterprise Compliance Provisions can be found on the City's website at <http://www.charleston-sc.gov/index.aspx?NID=127>. The selected Contractor will be subject to the requirements of this policy. The Contractor should contact the City's Minority Business Enterprise Office at (843) 973-7247 to acquire the appropriate documents to submit with the Pre-qualification Proposal.

SUBMITTAL CERTIFICATION

I hereby warrant that the information presented in this Statement of Qualifications is true, accurate, and complete.

By: Michael Massey
(printed name)


(signature)

Title: President

Date: 6/11/14

NOTIFICATION OF PRE-QUALIFIED CONTRACTORS

All Contractors who submit Pre-Qualification Proposals will be notified in writing if they did or did not pre-qualify. Only those Contractors which are pre-qualified will be allowed to bid on these Projects. The Owner's decision will be final.

City of Charleston
Minority/Women-Owned Business Enterprise (MWBE)
Compliance Provisions

This document shall be included with the submittal of the bid or offer. If the bidder or offeror fails to submit the form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

APPLICATION:

Charleston City Council has adopted a policy setting 20% as the guidelines for combined women-owned and minority-owned business enterprise participation for this project.

Definitions:

MBE is defined as a small business owned and controlled by minorities.

WBE is defined as a small business owned and controlled by women.

This means that fifty-one percent (51%) of the business must be owned by minorities or women and that they must control the management and daily operations of the business.

The guidelines for participation in City of Charleston's contracts for services, including construction, are hereby made a part of any contract resulting from this solicitation. These requirements shall apply to all contracts and resulting subcontracts issued by contractors. A list of certified minority-owned and women-owned business enterprises can be found on the City of Charleston's web site www.charleston-sc.gov; or by contacting Theron Snype, MBE Manager, 145 King Street, Charleston, SC 29401, (843) 973-7247, snypet@charleston-sc.gov.

COMPLIANCE REQUIREMENTS:

1. The Offeror shall provide, **with the submittal**, the following Affidavits properly executed which signify that the Offeror understands and agrees to the incorporated contract provisions:

- ☐ **Affidavit A - Listing of the Good Faith Effort & Identification of Minority and Women-owned Business Participation** as certification that efforts were made to use MWBE businesses on this project,

AND

- ☐ **Affidavit B - Work to be Performed by Minority and/or Women-owned Firms**
OR

- ☒ **Affidavit C - Intent to Perform Contract with Own Workforce**, in making this certification the Offeror states that the Offeror does not customarily subcontract elements of this type project and will perform all elements of the work with his/her own current work forces.

All affidavits supplied by the Offeror shall become a part of the agreement between the Contractor and the City of Charleston for performance of this contract. Failure to comply with any of these statements, certifications, or intentions stated in the Affidavits, or with the MBE/WBE provisions shall constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City of Charleston whether to terminate the contract for breach. In addition any breach may result in the bidder being prohibited from participation in future construction bids as determined by the City of Charleston.

The Contractor shall provide an itemized statement of payments to each MBE and WBE subcontractor before final payment is processed.

Name of Company:

Southern Premier Contractors, Inc.

Signature

Michael Massey

Print Name

President

Title

8/20/14

Date

Attest:

Paul Union

AFFIDAVIT C

City of Charleston, South Carolina Intent to Perform Contract with Own Workforce.

Affidavit of Southern Premier Contractors Inc. , Michael Massey
(Name of Offeror)

I hereby certify that it is our intent to perform 100% of the work required for the City of Charleston, South Carolina, Stormwater Cleaning + Inspection
contract.
(Name of Project)

In making this certification, the Offeror states that the Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all the elements of the work on this project with his/her own current work forces, and

The Offeror agrees to provide any additional information or documentation requested by the Owner in support of the above statement.

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Offeror to the commitments contained herein. We certify, under penalties of perjury, that we have examined the information in this affidavit, and to the best of our knowledge and belief, this information is true, correct and complete.

Date: 8/20/2014 Name of Authorized Officer (Print/Type): Michael Massey

Signature: [Signature]

Title: President

Sworn to before me this 20 day of August, 2014

Notary Public for the State of GA

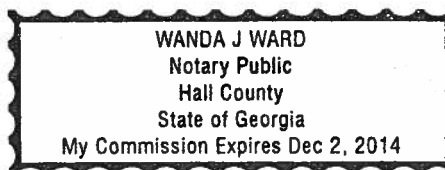
My Commission Expires: Dec. 2, 2014

Print Name: Wanda J Ward Wanda J Ward

Phone Number: 678-410-8777

Address: 4068 Old Cornelia Hwy
Lula, GA 30551

Notary Seal:



11 COMMITTEE / COUNCIL AGENDA

TO: **Joseph P. Riley, Jr., Mayor**
FROM: **J. Frank Newham** DEPT. **Public Service**
SUBJECT: **EMERGENCY STORM DRAIN REPAIR – DUNNEMANN AVENUE**
REQUEST: **Approval of emergency storm drain repairs at Dunnemann Avenue (between 10th & Wagener Avenue) by B&C Utilities, Inc.**

COMMITTEE OF COUNCIL: Ways & Means DATE: September 23, 2014

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>	<input checked="" type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Dir. Dept. of Public Serv.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>[Signature]</u>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes ☒ No ☐ N/A ☐

If yes, provide the following: Dept./Div: 050345 Account #: 52425

Balance in Account \$301,844.35 Amount needed for this item \$301,844.35

NEED: Identify any critical time constraint(s).

This was an emergency repair. Due to the presence of numerous sink holes in the road, the work was completed to avoid a potential safety hazard.

CFO's Signature: [Signature]

FISCAL IMPACT:

Mayor's Signature: [Signature]
Joseph P. Riley, Jr., Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

SOLE SOURCE JUSTIFICATION FORM

DEPARTMENT: Department of Public Service

PRODUCT: Repair of failing storm drains within Wagener Terrace (Dunnemann Avenue)

REQUISITION NUMBER:

VENDOR: B&C Utilities, Inc.

DATE: 8/20/14

Please state the use for this/these product(s):

Repair of failing storm drainage piping within Dunnemann Avenue. Originally the project was to be a point repair caused by a CWS line break. In repairing the storm drain numerous other problems became apparent.

1. Can the above product(s) be purchased from more than one distributor? If so, please list their company name and telephone number. **Yes, any licensed utility contractor can perform this work.**
2. Please explain in detail why this product is considered a sole source. (i.e. accessories, replacement parts, disposable supplies, compatibility with existing equipment, or a change in this product would invalidate results of research). Please estimate completion date of research. **The work on Dunnemann Avenue began as an emergency repair of collapsing storm drainage pipe at the intersection with 10th Street. Due to the depth of the pipe and the complexity of the repairs, City crews were unable to do the work and B&C Utilities was called in. During the repair work, additional areas of concern became apparent and required immediate restoration. B&C had performed well on the emergency repair.**
3. Have you evaluated comparable products within the last two years?

☒ X YES or NO ☐

If yes, please state the complete results of the evaluation.

If no, do you wish to evaluate this product? Explain why this item is the only acceptable product, on the market, for your utilization at this time.

SIGNATURE 
Laura S. Cabiness, P.E.

TITLE Director, Dept. of Public Service



B&C UTILITIES, INC.
Johns Island, SC 29455
(843)766-8109 Phone
(843)766-8158 Fax

office@bcutilities.net

Invoice

Date	Invoice #
8/5/2014	42527 -1777

City of Charleston
75 Calhoun Street, 3rd Floor
Charleston, S.C. 29401-3506
Attn: Engineering Dept. Frank Newham

P.O. No.	Terms	Rep
	Net 30	CSR

Description	Amount
Project: Dunnemann Avenue Dunnemann Avenue between 9th & 8th Point Repair on 18" Clay line. Saw cut asphalt and removed. Installed trench box, well pointed area. Excavated area and found crushed 18" clay line. Removed section and replaced with 10 LF of SDR26. 2 EA Mar Mac Couplings. Bedded pipe with # 57 granite rock. Backfilled and tamped with A-1 Sand. Hauled out muck from excavation. Installed crushed concrete road base material and patch paved point repair area. 36,722.00	
Dunnemann Avenue between 10th & 9th Point Repair on 15" clay line. Saw Cut asphalt and removed. Installed trench box. Excavated down to main line. Replaced 17 LF of clay line with SDR 26 and 2 EA 15" Clay X PVC Furnco's. Bedded new pipe with # 57 granite rock. Backfilled and tamped with A-1 Sand. Hauled out muck and asphalt. Installed crushed concrete base material and patch pave point repair area. 31,156.00	
10th and Dunnemann Cleaned out storm drain manhole and pumped down with large Godwin Pump. Found broken 10" clay line under gas line and sewer main. Abandoned 10" clay pipe by filling with flowable fill. Installed new 2 X 3 X 3 drop inlet with frame and grate. Piped new inlet to existing manhole with ductile iron pipe. Camera and vactor work investigating existing storm drain not draining. Backfilled road with A-1 sand and crushed concrete for road base. Milled out half of the intersection and overlaid with asphalt. 38,192.00	
Dunnemann Avenue between Wagener & 8th St.	
SERVICE CHARGE OF 1 1/2% PER MONTH (APR 18%) ON ALL INVOICES OVER 30 DAYS OLD.	Total



B&C UTILITIES, INC.
Johns Island, SC 29455
(843)766-8109 Phone
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Invoice

Date	Invoice #
8/5/2014	42527 -1777

office@bcutilities.net

City of Charleston
75 Calhoun Street, 3rd Floor
Charleston, S.C. 29401-3506
Attn: Engineering Dept. Frank Newham

P.O. No.	Terms	Rep
	Net 30	CSR

Description	Amount
Vactor and Cleaning Services performed by Sanders Brothers. Sanders Brothers invoices attached. Work performed on Dunnemann Avenue between 10th Avenue to Wagener.	
Site Work Sanders Brothers Invoice # 23508	15,851.85
Site Work Sanders Brothers Invoice # 23513	2,605.50
SERVICE CHARGE OF 1 1/2% PER MONTH (APR 18%) ON ALL INVOICES OVER 30 DAYS OLD.	
Total	\$301,844.35

Invoice

From: Sanders Brothers Construction Co., Inc.
P.O. Box 60969
North Charleston, SC 29419

Bill to: B & C Utilities, Inc.
3785 Old Charleston Hwy
Johns Island, SC 29455

Ship to: 3785 Old Charleston Hwy
Johns Island, SC 29455

Cust #	Customer Ref	Invoice #	Invoice Date	Due Date	Disc Date	Terms
2481	Vac Truck and C	23513	7/25/2014	8/24/2014		Net 30

Month/Trans	Line	Description	Material	Unit Price	Quantity	Amount
07/14/505	1	Camera Services	CS	1.75	270.00	472.50
07/14/505	2	Vacuum Truck	VT	7.90	0.00	2,133.00

Notes:

7/24/14 and 7/25/14 10th & Dunneman

Vacuum Services 270 LF @ \$7.90/LF
Camera Services 270 LF @ \$1.75/LF

Total	\$2,605.50
Sales Tax	
Less Disc	
Less Retainage	
Total Due	\$2,605.50

Entered 8/5/14

Invoice

From: Sanders Brothers Construction Co., Inc.
P.O. Box 60969
North Charleston, SC 29419

Bill to: B & C Utilities, Inc.
3785 Old Charleston Hwy
Johns Island, SC 29455

Ship to: 3785 Old Charleston Hwy
Johns Island, SC 29455

Cust #	Customer Ref	Invoice #	Invoice Date	Due Date	Disc Date	Terms
2481	Vac Truck & Cai	23508	7/25/2014	8/24/2014		Net 30

Month/Trans	Line	Description	Material	Unit Price	Quantity	Amount
07/14 501	1	Vacuum Truck	VT	7.90	1,359.00	10,736.10
07/14 501	2	Camera Services	GS	1.75	1,209.00	2,115.75
07/14 501	3	Vacuum Truck	VT	200.00	15.00	3,000.00

Notes:

Work Performed July 9th - July 18, 2014

10th & Dunneman

Vacuum Truck Rental 1359 LF @ \$7.90/LF
Camera Services 1209 LF @ \$1.75/LF
Disposal Fee 15 @ \$200/EA

Total Sales Tax	\$15,851.85
Less Disc	
Less Retainage	
Total Due	\$15,851.85

*entered
8/5/14*